

73-76  
No. 12212

---

United States  
Court of Appeals  
for the Ninth Circuit

---

SHOSO NIL,

Appellant,

vs.

J. HOWARD McGRATH, Attorney General, as Successor  
to the Alien Property Custodian,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court  
for the Territory of Hawaii

FILED

JUN 9 - 1949

PAUL P. O'BRIEN,  
CLERK



No. 12212

---

United States  
**Court of Appeals**  
for the Ninth Circuit

---

SHOSO NII,

Appellant,

VS.

TOM C. CLARK, Attorney General, as Successor  
to the Alien Property Custodian,

Appellee.

---

**Transcript of Record**

---

Appeal from the United States District Court  
for the Territory of Hawaii

---





# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Admission of Facts and Genuineness of Documents .....	93
Affidavit of Leon R. Gross in Support of Motion for Summary Judgment .....	45
Exhibit 1—Bill of Sale, Kaneichi Nii to Shoso Nii dated Jan. 2, 1933 .....	51
Exhibit 2—Deed dated Dec. 27, 1932, T. Ota to Kaneichi Nii .....	53
Exhibit 3—Deed dated July 23, 1938, T. Ota to Kaneichi Nii .....	57
Exhibit 4—Vesting Order 9777 .....	60
Set out as Exhibit A .....	13
Exhibit 5—Power of Attorney dated Feb. 7, 1939, Saku Nii to Shoso Nii.....	60
Exhibit 6—Power of Attorney dated Feb. 7, 1939, Kaneichi Nii to Shoso Nii.....	64
Exhibit 7—Certificate of Title dated March 31, 1948 .....	69
Affidavit of Mark N. Huckestein.....	80
Affidavit of Albert K. Makinney.....	74
Affidavit of T. Ota in Support of Motion for Summary Judgment .....	91
Amended Complaint .....	113

	PAGE
Amended Order and Rule to Show Cause.....	103
Answer and Counter Claim .....	20
Answer to Counter Claim .....	26
Answer to Petition of Attorney General.....	106
Appeal:	
Certificate of Clerk to Transcript of Record on .....	166
Cost and Supersedeas Bond and Approval of Bond on .....	162
Designation of Record on (USCA).....	493
Designation of Record on (Appellee-USCA)	496
Notice of .....	162
Statement of Points on (USCA).....	486
Appearance of Counsel, Leon M. Gross.....	37
Certificate of Clerk to Transcript of Record on Appeal .....	166
Commission filed May 21, 1948, Copy of.....	35
Complaint .....	2
A—Vesting Order 9777 .....	13
Complaint, Amended .....	113
Conclusions of Law .....	151
Cost and Supersedeas Bond and Approval of Bond .....	162
Counter Affidavit of Shoso Nii in Answer of Affidavit of T. Ota .....	95
Decision of the Court on Petition of the Attor- ney General, Oral .....	107

	PAGE
Deposition of Kaneichi Nii, etc.....	31
Designation of Record (USCA).....	493
Designation of Record on Appeal by Appellee (USCA) .....	496
Findings of Fact by the Court after a Trial of the Issues .....	145
Judgment Order .....	158
Memorandum of Tom C. Clark filed Dec. 13, 1948 .....	132
Motion for Findings of Fact.....	137
Motion for Issuance of Commission to Take Deposition .....	26
Affidavit of Shiro Kashiwa .....	28
Motion for Leave to File Amended Complaint..	110
Motion for Summary Judgment .....	44
Affidavit of Leon R. Gross .....	45
Motion to Strike Affidavit of Leon R. Gross....	41
Motion to Strike Affidavits .....	82
Motion to Reopen Case to Take Additional Tes- timony .....	128
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	162
Notice of Motion for Summary Judgment.....	40
Opinion .....	153
Order and Rule to Show Cause, Amended.....	103

Order Directing Accounting and Payment, etc..	160
Order of Motion for Issuance of Commission to Take Deposition .....	30
Order Staying Judgment Order and Staying Order Directing Accounting and Payment, etc. ....	165
Petition of the Attorney General of the United States .....	98
Request for Admission of Genuineness of Docu- ments and Request for Admission of Facts..	84
Statements of Points on Appeal (USCA).....	486
Summons and Return .....	18
Stipulation and Order for Pre-Trial Examina- tion of Shoso Nii.....	37
Stipulation for Extension of Time for Filing Cross-Interrogatories on Behalf of Defend- ant Tom C. Clark, etc. ....	39
Transcript of Proceedings .....	169
Exhibits for Defendant, United States:	
1—Certificate of Title .....	367
Set out at page .....	462
2-A to 2-M, incl.—Tax Bills Real Property..	370
Set out at pages .....	468-472
3-A—Letter, 10/27/47, K. Mikami to Alien Property Custodian .....	375
Set out at page .....	473

## Exhibits for Defendant, U. S.—(Cont'd)

3-B—Letter, 12/3/47, S. Kashiwa to James Hammond, O.A.P. ....	375
Set out at page .....	474
3-C—Letter, 2/11/48, K. Mikami to OAP..	375
Set out at page .....	475
3-D—Letter, 3/31/48, K. Mikami to OAP...	375
Set out at page .....	476
3-E—Letter, 3/26/48, S. Kashiwa to James Hammond, OAP .....	375
Set out at page .....	485

## Exhibits for Plaintiff:

A-1—Notice of Claim to Alien Property Custodian .....	185
Set out at page .....	402
A-2—Reply of Alien Property Custodian...	185
Set out at page .....	408
B—Deposition of Kaneichi Nii.....	209
C—Power of Attorney, S. Nii to K. Mikami	269
Set out at page .....	410
D-1 to D-10, incl.—Income Tax Returns Years 1938 to 1947, incl.....	278
Set out at pages .....	413-442
E-1—Registration Certificate, Selective Service .....	294
Set out at page .....	443
E-2—Permit to Leave United States, Selective Service .....	296
Set out at page .....	444

## Exhibits for Plaintiff—(Cont'd)

F—Deed, T. Ota to K. Nii dated Dec. 27, 1932 .....	306
Set out as Exhibit 2 at page.....	53
G—Bill of Sale, K. Nii to Shoso Nii, Jan. 2, 1933 .....	306
Set out as Exhibit 1 at page.....	51
H—Deed, T. Ota to K. Nii, July 23, 1938....	307
Set out as Exhibit 3 at page.....	57
I—Power of Attorney, Kaneichi Nii to Shoso Nii .....	307
Set out as Exhibit 6 at page.....	64
J—Power of Attorney, Saku Nii to Shoso Nii .....	307
Set out as Exhibit 5 at page .....	60
K—Vesting Order No. 9777.....	308
Set out as Exhibit A to Complaint at page	13
L—Sketch Location of Property.....	311
Set out at page .....	446
M—Blue Print of Property.....	316
Set out at page .....	447
N—Photostat, Dividend Payment .....	374
Set out at page .....	448
O—Photostats, Endorsements of Stockbook, Waipahu Garage, Ltd. ....	374
Set out at page .....	454
P—Will, Kaneichi Nii, dated Dec. 17, 1932..	396
Set out at page .....	461

## Witnesses for Defendant, United States:

Kam, Theodore W. T.	
—direct .....	369

Makinney, Kenneth	
—direct .....	366

## Witnesses for Plaintiff:

Ikinaga, Eisuke	
—direct .....	222
—cross .....	261
—redirect .....	331
—recross .....	336

Kinney, Oliver	
—direct .....	302

Matsuura, Shigeo	
—direct .....	262
—recalled, direct .....	272
—cross .....	280

Mikami, Katsutoshi	
—direct .....	269
—recalled, direct .....	373

Nii, Shoso	
—direct .....	292, 308
—cross .....	325
—recalled, direct .....	342, 359
—cross .....	343, 365

Tsumoto, Henry Jinichi	
—direct .....	182
—cross .....	196
—redirect .....	206





## NAMES AND ADDRESSES OF ATTORNEYS

For the Plaintiff,

SHOSO NII,

Shiro Kashiwa, Esq.,  
307 Hawaiian Trust Building,  
Honolulu 48, T.H.

For the Defendant,

TOM C. CLARK,

United States Attorney,  
District of Hawaii,  
Federal Building,  
Honolulu, T.H.,

and

LEON R. GROSS, Esq.,

Yokohama Specie Bank Building,  
Honolulu, T.H. [1\*]

---

\* Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the  
Territory of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General as Successor  
to the Alien Property Custodian,

Defendant.

### COMPLAINT

To the Honorable the Judges of the United States  
District Court for the Territory of Hawaii:

Comes now Shoso Nii, plaintiff above named, and  
alleges as follows:

#### I.

That the ground upon which the jurisdiction of  
this Court is involved and depends is as follows:

This is an action against the Attorney General as  
successor to the Alien Property Custodian involv-  
ing the return of a parcel of real property valued in  
excess of \$30,000.00 brought under the Trading with  
the Enemy Act, as amended, 50 U. S. C. A. Sec. 9  
(a) and also for ancillary equitable relief arising  
out of the same matter in conjunction therewith.

#### II.

That the plaintiff, Shoso Nii, was for more than  
33 years next preceding the date hereof and is a  
permanent resident of Waipahu, Oahu, City and  
County of Honolulu, Territory of Hawaii, United

States of America; and that the plaintiff is not an "enemy" or an "ally of enemy" as the terms are defined in the Trading with the Enemy Act. [7]

### III.

That the plaintiff was born at Waipahu aforesaid on the 3rd day of January, 1914, and by virtue of his birth within the jurisdiction of the United States of America is a citizen of the United States; and that he has continuously since the date of his birth to the date hereof kept and maintained his status as a citizen of the United States of America.

### IV.

That the defendant, Tom C. Clark, was, at the time of the issuance of the Vesting Order hereinafter mentioned, and is now the Attorney General of the United States of America, the duly appointed successor to the Alien Property Custodian acting and purporting to act pursuant to the authority vested in him by the Trading with the Enemy Act as amended and Executive Order No. 9095 as amended.

### V.

That the plaintiff's father is Kaneichi Nii; that said Kaneichi Nii is a citizen of Japan and has been continuously residing in Japan since May, 1935, to the date hereof; that prior to on or about May, 1935, said Kaneichi Nii resided for a long period of time at Waipahu aforesaid and operated a general merchandise store known as the "K. Nii Store" at Waipahu aforesaid; that due to his business ability, hard work and thrifty habits said Kaneichi Nii ac-

quired considerable real property holdings in Wai-pahu aforesaid and accumulated a sizeable estate for himself; that in May of 1935 said Kaneichi Nii decided to retire from active business and returned to Japan; that at the time he returned to Japan he left and gave by way of gift everything he left in the Territory of Hawaii to his only son, the [8] plaintiff herein; and that the general merchandise store was turned over to the plaintiff by a duly executed bill of sale.

## VI.

That among the real properties left and given to the plaintiff was the following:

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, being Lot "4", and thus bounded and described:

### Parcel No. 1

Beginning at the Southeast corner of this piece of land on the West bank of the Kapakahi Stream, being also the Northeast end of present wooden bridge, the true azimuth and distance of the said point to a pipe driven at the Northwest corner of Lot 10, Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true South:

1.  $105^{\circ} 50'$  170.00 feet along the North side of right of way;

2.  $15^{\circ} 50'$  14.80 feet along the West end of right of way;

3.  $105^{\circ} 50'$  105.80 feet along the remaining portion of R. P. 5694 L. C. Aw. 6545 Apana 1 to Haalilio, to a pipe;

4.  $199^{\circ} 50'$  140.10 feet along the same, to a pipe;

5.  $294^{\circ} 16'$  218.60 feet along the South bank of the Kapakahi Stream;

6.  $311^{\circ} 48'$  25.54 feet along the West bank of the Kapakahi Stream;

7.  $348^{\circ} 10'$  61.30 feet along the West bank of the Kapakahi Stream;

8.  $19^{\circ} 14'$  27.50 feet along the West bank of the Kapakahi Stream, to the point of beginning.

Containing an Area of 29,200 square feet, or 0.670 Acre, or thereabouts.

Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the owners and occupants of the above-mentioned lot and the remaining portion of L. C. Aw, 6545 Apana 1 to H. Haalilio being a road purpose only, which right of way is described as follows: [9]

Beginning at the Northeast corner of this piece of land on the West bank of Kapakahi Stream, the true azimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 beginning  $339^{\circ} 06'$  28.75 feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06'$  17.46 feet along the West bank of the Kapakahi Stream;

2.  $105^{\circ} 50'$  41.04 feet;

3. 195° 50' 14.80 feet;
4. 285° 50' 30.00 feet to the point of beginning and containing an area of 526 square feet.

that the property afore described is situated at Waipahu aforesaid and that there are three valuable buildings on the said property.

## VII.

That with relation to the real property afore described in paragraph VI although it was orally given to the plaintiff, there was never a deed executed in favor of the plaintiff from his father; that subsequent to May, 1935, for more than ten (10) continuous years the plaintiff took possession of the premises and openly, exclusively, adversely, continuously and without interruption held himself to be the owner of the premises aforescribed against the entire world; that since May, 1935, he possessed said property and collected all rentals due from the premises and kept the said rentals for his own use; that since May, 1935, he paid all Territorial real property taxes on the premises; that since May, 1935, he considerably improved the premises with permanent improvements at his own labor and expense; that since May, 1935, he controlled the property in every respect as if he owned the property; that since May, 1935, he paid gross income taxes to the Territory of Hawaii in his own name on the gross rentals from the premises; that since May, 1935, he paid in his own name net income taxes, both Territorial and Federal, on the rental income from the premises;



that on July 23, 1938, he purchased from one T. Ota for the sum of \$100.00 by way of a [10] deed duly executed by T. Ota, parcel 2 described in the Vesting Order, the exact description of which is as follows:

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, and thus bounded and described:

#### Parcel No. 2

Beginning at the Northeast corner of this piece of land the true azimuth and distance of the said point of beginning from a pipe driven at the Northwest corner of the Lot 10, Land Court Application 779, by traverse, being: (a)  $159^{\circ} 06' 28.75$  feet and (b)  $105^{\circ} 50' 30.0$  feet and running by azimuths measured clockwise from true South:

1.  $15^{\circ} 50' 14.8$  feet;
2.  $105^{\circ} 50' 140.0$  feet;
3.  $195^{\circ} 50' 14.8$  feet;
4.  $285^{\circ} 50' 140.0$  feet to the point of beginning.

Containing an Area of 2,072 square feet, or thereabouts.

that it was put in the name of Kaneichi Nii because the adjoining parcel 1 was in the name of Kaneichi Nii and since parcel 1 was by way of gift already his, the plaintiff thought that no harm would be

done in naming as grantee said Kaneichi Nii; that the foregoing acts were all in reliance of the gift of the said real property to him in May, 1935; and that Kaneichi Nii held said Parcel 2 in trust for plaintiff.

### VIII.

That there were other real properties in Waipahu left by gift to the plaintiff by his father in May, 1935, which were also parol gifts unsupported by deeds, but plaintiff in 1939 using powers of attorney from Kaneichi Nii and Saku Nii, wife of said Kaneichi Nii, sold said parcels and collected all proceeds from the sale of the said property for his own use and purpose. [11]

### IX.

That at the time of the gift in May, 1935, to the plaintiff, the property aforedescribed in paragraph VI being situated in a remote part of Waipahu was not of much value; that plaintiff could have sold said properties described in paragraphs VI and VII as in the case of the property described in paragraph VIII and invested said funds to his own use but instead kept the properties; that on or about 1940 four-laned paved highways have been constructed near the said properties and the value of the properties now is about ten times that of May, 1935; that its present value is about \$30,000.00 more or less; that if the properties described are not returned as prayed for in this cause to the plaintiff, the plaintiff will suffer great and irreparable damages; that plaintiff is and was since May, 1935, the beneficial and equitable owner of the premises de-



scribed; and that he is also entitled to the premises on grounds of adverse possession.

### X.

That heretofore, to wit, on September 12, 1947, the defendant in his capacity as successor to the Alien Property Custodian of the United States of America issued Vesting Order No. 9777, an exact copy of which Order is attached hereto and marked Exhibit "A" and hereby incorporated herein as if recited herein.

### XI.

That by virtue of said Order the said properties are now vested in the defendant, Attorney General of the United States of America in his capacity as successor to the Alien Property Custodian, and the plaintiff has been illegally deprived of his properties by said Vesting Order; that since the issuance of the said Order the defendant through his agents have been illegally, [12] unlawfully and contrary to law and the Constitution of the United States of America in complete control and possession of the premises collecting all rentals therefrom and will continue to do so, and plaintiff is informed and believes that defendant will sell said properties if the relief requested herein is not granted; and that such a sale would be illegal and contrary to the laws and the Constitution of the United States of America.

### XII.

That the aforesaid wrongful and illegal possession, supervision and control of the properties have caused and will cause plaintiff irreparable damages.

## XIII.

That the threatened sale of said real properties, if carried out, will cause irreparable damages to the plaintiff.

## XIV.

That prior to the filing of this suit the plaintiff duly made and filed with the Office of the Alien Property Custodian at Washington, District of Columbia, notice of his claim to said real properties under oath on Form APC 1-A and in such form and in such particulars required by said Alien Property Custodian, in conformity with and in pursuance to the statutes, requirements, and orders in such cases made and provided; that no hearing has been granted in connection with such claim and plaintiff has been informed that no hearing will be granted immediately upon the filing of such claim; that he has been informed that the Office of the Alien Property Custodian has not acted on claims filed years ago and there is no reason to believe that plaintiff's claim will be acted upon immediately. [13]

## XV.

That in addition to the vesting of the properties aforedescribed the defendant in his capacity as successor to the Alien Property Custodian, through his agents, has illegally and unlawfully made written demands on the plaintiff to pay:

“That certain debt or other obligation owing to Kaneichi Nii, also known as Konichi Nii by Shoso Nii, doing business as S. Nii Store, arising out of rents collected from the property de-

scribed in sub-paragraph 2-a hereof, and any and all rights to demand, enforce and collect the same.”

that plaintiff claims that since he was and is the beneficial and equitable owner of the premises as alleged in paragraphs V, VI, VII, IX, XI, XII and XIII, he did not and does not owe the debt above referred to in the Vesting Order to Kaneichi Nii or his successor the defendant; that in spite of such claims of the plaintiff the defendant through his agents have insisted on the payment of the alleged debt; that the amount of the alleged debt claimed by the defendant through his agent is approximately \$3,500.00 to \$4,000.00; that if the defendant unlawfully, forcibly and summarily collects said alleged debt, the plaintiff will be required to liquidate his store business in that he does not have sufficient cash to pay such a large sum of money; that if the relief as prayed for with relation to the matters alleged in this paragraph is not granted, the plaintiff will be permanently and irreparably damaged.

#### XVI.

That the plaintiff claims that the matters of the return of properties herein alleged and the matter of the existence or non-existence of the debt alleged in paragraph XV is so closely related that it should be settled in this single cause. [14]

#### XVII.

That plaintiff has no adequate and speedy remedy at law.

Wherefore, plaintiff prays that a summons be is-

sued out of this Court, directed to said Tom C. Clark, Attorney General as successor to the Alien Property Custodian, commanding him on a day certain, to appear and answer this bill of complaint as is by law provided, answer under oath being waived, and obey and perform such orders and decrees in the premises as to the Court may seem proper and required by the principles of equity and good conscience; and

The plaintiff prays that a decree be entered herein restraining the sale of the real properties described in paragraphs VI and VII above by the defendant as well as his agents, employees and representatives pending determination of this action; that it be adjudged that the right and title in said real properties are in the plaintiff and that said plaintiff is entitled to the immediate possession thereof; and directing defendant to transfer and deliver to the plaintiff said real properties and to render a full, true and correct accounting of moneys received and collected from September 12, 1947, to the date of the transfer.

And as further relief the plaintiff prays that a decree be entered herein permanently enjoining the defendant from collecting the alleged debt alleged in paragraph XV above; that an order be entered declaring that the entire Vesting Order No. 9777 to be a nullity and of no effect.

The plaintiff prays for such other, further and different relief as to this Court may seem equitable, just and proper. [15]

Dated at Honolulu, T. H., this 31st day of December, A.D. 1947.

/s/ SHOSO NII.

His Attorney:

/s/ SHIRO KASHIWA.

Territory of Hawaii,  
City and County of Honolulu—ss.

Shoso Nii, being first duly sworn, on oath, deposes and says: That he is the Plaintiff named in the foregoing Complaint; that he has read the same, knows the contents thereof and that the same are true.

/s/ SHOSO NII.

Subscribed and sworn to before me this 31st day of December, A. D. 1947.

(Seal) /s/ FLORENCE Y. OKUBO,

Notary Public, First Judicial Circuit, Territory of Hawaii. [16]

### EXHIBIT "A"

Office of Alien Property  
Department of Justice  
Vesting Order 9777

Re: Real property and a claim owned by Kaneichi Nii, also known as Konichi Nii

Under the authority of the Trading with the Enemy Act, as amended Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Kaneichi Nii, also known as Konichi Nii,



whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan);

2. That the property described as follows:

(A.) Real property situated at Waikale, Waipahu, Oahu, T. H., particularly described in Exhibit A attached hereto and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto and any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property, and

(B.) That certain debt or other obligation owing to Kaneichi Nii, also known as Konichi Nii by Shoso Nii, doing business as S. Nii Store, arising out of rents collected from the property described in sub-paragraph 2-a hereof, and any and all rights to demand, enforce and collect the same.

is property within the United States owned or controlled by, payable or deliverable to, hold on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the person named in sub-paragraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest, [17]

There Is Hereby Vested in the Attorney General of the United States the property described in subparagraph 2-a hereof, subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries, and

There Is Hereby Vested in the Attorney General of the United States the property described in subparagraph 2-b hereof,

All such property so vested to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

(40 Stat. 411, 50 U.S.C. App. 1; 55 Stat. 839, 50 U.S.C. App. Sup. 616; Pub. Law 322, 79th Cong., 60 Stat. 50; Pub. Law 671, 79th Cong., 60 Stat. 925; E. O. 9193, July 6, 1942, 9193, July 6, 1942, 7 F. R. 5205, CFR, Cum, Supp.; E. O. 9567 June 8, 1945, 10F. R. 6917, 3 CFR, 1945 Supp.; E. O. 9788, Oct. 14, 1946, 11 F. R. 11981)

Executed at Washington, D. C., on September 12, 1947.

For the Attorney General:

(Official Seal.)

/s/ DAVID L. BAZELON,  
Assistant Attorney General, Director, Office of Alien  
Property. [18]

### EXHIBIT A

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, being Lot "4", and thus bounded and described:

#### Parcel No. 1

Beginning at the Southeast corner of this piece of land on the West bank of the Kapakahi Stream, being also the Northeast end of present wooden bridge, the true azimuth and distance of the said point to a pipe driven at the Northwest corner of Lot 10, Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running my azimuths measured clockwise from true South:

1.  $105^{\circ} 50'$  170.00 feet along the North side of right of way;
2.  $15^{\circ} 50'$  14.80 feet along the West end of right of way;
3.  $105^{\circ} 50'$  105.80 feet along the remaining portion of R. P. 5694 L.C. Aw. 6545 Apana 1 to Haalilio, to a pipe;



4.  $199^{\circ} 50'$  140.10 feet along the same, to a pipe;
5.  $294^{\circ} 16'$  218.60 feet along the South bank of the Kapakahi Stream;
6.  $311^{\circ} 48'$  25.54 feet along the West bank of the Kapakahi Stream;
7.  $348^{\circ} 10'$  61.30 feet along the West bank of the Kapakahi Stream.
8.  $19^{\circ} 14'$  27.50 feet along the West bank of the Kapakahi Stream, to the point of beginning

Containing an Area of 29,200 Square Feet, or 0.670 Acre, or thereabouts. [19]

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii and thus bounded and described:

### Parcel No. 2

Beginning at the Northeast corner of this piece of land the true azimuth and distance of the said point of beginning from a pipe driven at the Northwest corner of the Lot 10, Land Court Application 779, by traverse, being; (a)  $159^{\circ} 06'$  28.75 feet and (b)  $105^{\circ} 50'$  30.0 feet and running by azimuths measured clockwise from true South:

1.  $15^{\circ} 50'$  14.8 feet;
2.  $105^{\circ} 50'$  140.0 feet;
3.  $195^{\circ} 50'$  14.8 feet;
4.  $285^{\circ} 50'$  140.0 feet to the point of beginning.

Containing an Area of 2,072 Square Feet, or thereabouts.

Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the owners and occupants of the above-mentioned lot and the remaining portion of L.C. Aw. 6545 Apana 1 to H. Haalilio being a road purpose only, which right of way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of Kapakahi Stream, the true azimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06'$  28.75 feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06'$  17.46 feet along the west Bank of the Kapakahi Stream;
2.  $105^{\circ} 50'$  41.04 feet;
3.  $195^{\circ} 50'$  14.80 feet;
4.  $285^{\circ} 50'$  30.00 feet to the point of beginning and containing an area of 526 square feet. [20]

---

[Title of District Court and Cause]

### SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon Shiro Kashiwa, plaintiff's attorney, whose address is 307-208 Hawaiian Trust Building, Honolulu 48, T. H., an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the

day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(Seal)            /s/ WM. F. THOMPSON JR.,  
                         Clerk of Court.

Date: Jan. 5, 1948. [21]

### RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 5th day of January, A.D. 1948, I received the within summons at Honolulu, T. H., and executed the same by handing to and leaving with Maurice Sapienza, Honolulu, T. H., Assistant United States Attorney, District of Hawaii, certified copy of the within Summons together with a certified copy of the Complaint attached thereto, at the Federal Building, Honolulu, T. H., and by mailing certified copies of the within Summons and Complaint to Hon. Tom C. Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, at Washington 25, D. C., return receipt requested.

Dated at Honolulu, T. H., this 5th day of January, A. D. 1948.

(Seal)            OTTO F. HEINE,  
                         United States Marshal,  
By /s/ EMMANUEL U. MOSES, JR.,  
                         Deputy United States Marshal.

Marshal's Fees, \$4.06; Total, \$4.06.

(Return Post Office Receipt attached.)

[Endorsed]: Filed Jan. 5, 1948.

[Title of District Court and Cause.]

### ANSWER

The defendant, Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, for his answer to the Complaint:

1. Admits that this is an action against the Attorney General of the United States as successor to the Alien Property Custodian and that it purports to arise under the Trading with the Enemy Act, as amended, and except as thus expressly admitted, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the Complaint.

2. Denies that the plaintiff is not an "enemy" within the meaning of the Trading with the Enemy Act, as amended, and except as thus expressly denied, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the Complaint.

3. Denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph III of the Complaint.

4. Admits the allegations contained in paragraph IV of the Complaint.

5. Admits that the plaintiff's father is Kaneichi Nii, that the said Kaneichi Nii is a citizen of Japan who has been resident in Japan [23] since May, 1935, that prior thereto the said Kaneichi Nii had resided

at Waipahu and operated a store known as "K. Nii Store," and that the said Kaneichi Nii, in or about May, 1935, conveyed the said store to the plaintiff by bill of sale; denies that the said Kaneichi Nii gave to the plaintiff by way of gift everything which he left in the territory of Hawaii; and, except as thus expressly admitted and denied, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the Complaint.

6. Denies that the real property described in paragraph VI of the Complaint was left or given to the plaintiff and, except as thus expressly denied, admits the allegations contained in the said paragraph of the Complaint.

7. Admits that there was never a deed executed in favor of the plaintiff by his father with respect to the real property described in paragraph VI of the Complaint; admits further that the real property described in paragraph VII of the Complaint was conveyed by deed to Kaneichi Nii; and, except as thus expressly admitted, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of the Complaint.

8. Denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII of the Complaint.

9. Denies that the plaintiff is and was since May, 1935, the beneficial and equitable owner of the prem-



ises described in paragraphs VI and VII of the Complaint; denies further that the plaintiff is entitled to the premises on grounds of adverse possession; and, except as thus expressly denied, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IX of the Complaint.

10. Admits the allegations contained in paragraph X of the Complaint. [24]

11. Admits that the defendant by his agents has been and is in possession of the premises and has been and is collecting the rents, and that it will be the duty of the defendant to sell the premises according to law, and except as thus expressly admitted, denies the allegations in paragraph XI of the Complaint.

12. Denies that the defendant's possession, supervision and control of the property are wrongful or illegal and, except as thus expressly denied, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XII of the Complaint.

13. Denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of the Complaint.

14. Admits that the plaintiff filed with the Office of Alien Property, at Washington, D. C., under oath a claim to the property on Form APC-1A; admits further that no hearing has been granted on the

said claim and that the plaintiff has been informed that it is not possible to state when a hearing will be held on the said claim; and, except as thus expressly admitted, denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIV of the Complaint.

15. Admits that the defendant has demanded and demands that the plaintiff pay the debt as set forth in the vesting order and in paragraph XV of the Complaint; denies that the said demand for payment is illegal; and, except as thus expressly admitted and denied, denies that he has knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph XV of the Complaint.

16. Alleges that paragraph XVI of the Complaint contains no material allegations of fact and, therefore, requires no answer.

17. Denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XVII of the Complaint. [25]

For a First, Separate and Complete Defense, the Defendant Alleges:

18. That the plaintiff was a resident of Japan after June 14, 1941, and at the time of the issuance of the vesting order herein, and that he is an enemy and a national of a designated enemy country within the meaning of the Trading with the Enemy Act, as

amended, and Executive Order No. 9193, as amended.

For a Counterclaim Against the Plaintiff, the Defendant Alleges:

19. That the Court has jurisdiction of this counterclaim under Section 24(1) of the Judicial Code (28 USC Sec. 41(1)) and Section 17 of the Trading with the Enemy Act, as amended (50 U.S.C., App., Sec. 17).

20. That by virtue of Vesting Order No. 9777, dated September 12, 1947, a copy of which is incorporated in the plaintiff's Complaint as Exhibit "A" thereto, the defendant became and is the owner of:

"That certain debt or other obligation owing to Kaneichi Nii, also known as Konichi Nii, by Shoso Nii, doing business as S. Nii Store, arising out of rents collected from the property described in subparagraph 2-a hereof, and any and all rights to demand, enforce and collect the same."

21. That although the defendant has made demand upon the plaintiff for the payment of the aforesaid debt, the plaintiff has refused to pay it.

Wherefore, the defendant demands judgment against the plaintiff (1) dismissing the plaintiff's Complaint; (2) ordering the plaintiff to account for all rents collected by him from the property described in the vesting order, together with interest, and to pay such rents and interest thereon to the defendant; and (3) for costs. [26]



Honolulu, T. H., May 3, 1948.

/s/ RAY J. O'BRIEN,  
United States Attorney,

/s/ DAVID L. BAZELON,  
Assistant Attorney General, Director, Office of Alien  
Property,

/s/ GEORGE B. SEARLS,  
Chief Trial Attorney,

/s/ HAROLD UNGAR,  
Attorney, Department of Justice, Washington, D. C.  
Attorneys for Defendant.

(Acknowledgment of Service.)

[Endorsed]: Filed May 3, 1948. [27]

[Title of District Court and Cause.]

### ANSWER TO COUNTER-CLAIM

Comes now Shoso Nii, Plaintiff above named, and in answer to the Counter-claim of the defendant contained in the defendant's answer to the plaintiff's complaint, hereby denies that there was any debt owing from the plaintiff to Kaneichi Nii, also known as Konichi Nii, arising out of rents collected from the property described in sub-paragraph 2-a of the Vesting Order No. 9777 dated September 12, 1947.

Dated at Honolulu, T. H., this 4th day of May, A.D. 1948.

SHOSO NII,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney.

(Acknowledgment of Service.)

[Endorsed]: Filed May 6, 1948. [29]

---

[Title of District Court and Cause.]

### MOTION FOR ISSUANCE OF COMMISSION TO TAKE DEPOSITION

Comes now Shoso Nii, Plaintiff in the above-entitled cause, by his attorney, Shiro Kashiwa, and moves this Honorable Court that a commission issue out of and under the seal of this Honorable Court directed to the Consul of the United States of

America at Kobe, Hyogo Prefecture, Japan, to take the testimony of Kaneichi Nii, whose address is 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, as a witness for and on behalf of the Plaintiff above mentioned at any hearing that may be held on the Petition of the Plaintiff and the Counter-Claim by the Defendant filed in the above-entitled cause and matter and to propound written interrogatories and cross-interrogatories, if any, to said Kaneichi Nii and record his answers to the same.

This motion is based on the records and pleadings on file in the above-entitled cause and matter and particularly upon the Affidavit of Shiro Kashiwa attached hereto and made a part hereof. [31]

Dated at Honolulu, T. H., this 10th day of May, A.D. 1948.

SHOSO NII,

Plaintiff.

By /s/ SHIRO KASHIWA,

His Attorney.

#### NOTICE OF MOTION

Please take notice that the above Motion will be presented to the Honorable J. Frank McLaughlin at the hour of 10:00 o'clock a.m., on Wednesday, the 12th day of May, 1948, or as soon thereafter as counsel may be heard, in his Courtroom in the Federal Building, Honolulu, T. H.

/s/ SHIRO KASHIWA,

Attorney for Plaintiff. [32]

## AFFIDAVIT OF SHIRO KASHIWA

Territory of Hawaii,  
City and County of Honolulu—ss.

Shiro Kashiwa, being first duly sworn, on oath deposes and says: That he is an attorney at law, an officer of this Court, and that he acts as attorney for the Plaintiff in the above-entitled cause; that said Kaneichi Nii named in the foregoing Motion is a necessary and material witness for and in behalf of the plaintiff in any hearing that may be held on the petition filed in the above-entitled cause and matter as well as on the counterclaim of the defendant; that affiant has been informed and believes and upon such information and belief states the fact to be that said Kaneichi Nii if called at a hearing on said petition would testify in substance as follows:

That prior to his last departure from Hawaii to Japan he made a gift of any and all properties of whatever nature whatsoever, including real properties, to the plaintiff, Shoso Nii; [33]

That the affiant further alleges and states the fact to be that insofar as it is known to the affiant there is no other witness or witnesses (except the Plaintiff himself) known to the affiant residing in the Territory of Hawaii by whom the foregoing facts could be proved; that said Kaneichi Nii because of his residency at Hiroshima Ken, Japan, as aforesaid, will be unable to appear in Court at the hearing of the petition heretofore filed; that the Plaintiff cannot safely proceed with the

hearing without the testimony of said Kaneichi Nii; and further affiant sayeth not, save and except that he makes this affidavit in support of the foregoing motion for issuance of commission to take a deposition of Kaneichi Nii.

/s/ SHIRO KASHIWA.

Subscribed and sworn to before me this 10th day of May, A.D. 1948.

[Seal]      /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires August 9,  
1951.

(Acknowledgment of Service.)

[Endorsed]: Filed May 11, 1948. [34]

[Title of District Court and Cause.]

ORDER OF MOTION FOR ISSUANCE OF  
COMMISSION TO TAKE DEPOSITION

The motion filed on behalf of Shoso Nii, Plaintiff above mentioned, for a commission to take the deposition of Kaneichi Nii having duly come on to be heard and it appearing to the satisfaction of the Court that said Kaneichi Nii is presently residing at Hiroshima Ken, Japan, and that the Plaintiff cannot safely proceed with the trial of said cause without the testimony of said Kaneichi Nii;

Now, Therefore, It Is Hereby Ordered that a commission issue out of and under the seal of this Court directed to the Consul of the United States of America at Kobe, Hyogo Prefecture, Japan, to take the testimony of said Kaneichi Nii whose address is 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, as a witness for and on behalf of the Plaintiff above mentioned, said deposition to be taken within a reasonable time after the date of this Order, upon written interrogatories and cross-interrogatories, if any, to be then and there propounded to said Kaneichi Nii. [36]

It Is Further Ordered that the direct interrogatories to be propounded on behalf of the Plaintiff herein shall be filed within ten (10) days after entry of this Order; that the cross-interrogatories to be propounded on behalf of the Defendant shall be filed within Thirty (30) days after the filing of the Plaintiff's direct interrogatories; that re-direct interrogatories to be propounded on behalf



of the Plaintiff shall be filed within Ten (10) days after the filing of said cross-interrogatories; and that recross-interrogatories to be propounded on behalf of the Defendant shall be filed within Thirty (30) days after the filing of the Plaintiff's redirect interrogatories.

Dated at Honolulu, T. H., this 13th day of May, 1948.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above-Entitled  
Court.

Approved as to form:

TOM C. CLARK,  
Attorney General, as Successor to the Alien Property Custodian, Defendant.

RAY J. O'BRIEN,  
United States Attorney, District of Hawaii, Attorney for Defendant.

By /s/ EDWARD A. TOWSE,  
Assistant United States Attorney, District of Hawaii.

[Endorsed]: Filed May 13, 1948. [37]

---

[Title of District Court and Cause.]

DEPOSITION OF KANEICHI NII TAKEN ON  
BEHALF OF PLAINTIFF

United States of America—ss.

Kaneichi Nii, of 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, residing more than one



hundred miles from the place where the trial of this action will occur, a witness called on behalf of the Plaintiff herein, being duly cautioned and sworn to testify the whole truth, and being carefully examined, deposes and says as follows: [39]

INTERROGATORIES TO BE PROPOUNDED  
TO KANEICHI NII

1. Q. What is your name? A. ....
2. Q. Where do you reside? A. ....
3. Q. Are you the father of Shoso Nii who now resides at Waipahu, Oahu, Territory of Hawaii, United States of America? A. ....
4. Q. How old are you now? A. ....
5. Q. At what age did you go to Hawaii for the first time? A. ....
6. Q. How many years did you spend in Hawaii? A. ....
7. Q. When did you last come back from Hawaii to Japan? A. ....
8. Q. At the time you last came back from Hawaii to Japan how many children did you have? A. ....
9. Q. Will you name your children who are now living and give their present addresses?  
A. ....
10. Q. When you last came back from Hawaii to Japan, did you transfer the Nii Store to your son Shoso Nii? A. ....
11. Q. If you did transfer the store, did you sign a bill of sale? A. ....
12. Q. Just prior to your last departure from

Hawaii to Japan, did you own any real properties in Hawaii? A. ....

13. Q. What did you do with all of your real properties in Hawaii when you last left Hawaii for Japan? A. ....

14. Q. When you last returned to Japan from Hawaii, did you have properties in Japan? A. ....

15. Q. At that time about how much was such property in Japan together with what you brought back from Hawaii on your last trip worth in Japanese yen? A. ....

16. Q. Was that sufficient to comfortably take care of you and your wife for the rest of your life and your wife's life? A. ....

17. Q. When you last left Hawaii for Japan was your daughter Hatsuko ill? A. ....

18. Q. Where was Hatsuko living at that time? A. ....

.....

Kaneichi Nii. [41]

# CERTIFICATE BY CONSUL OF THE UNITED STATES OF AMERICA

United States of America—ss.

I hereby certify that on the .... day of ....., 1948, before me, Consul of the United States of America, at my office, ....., Japan, personally appeared, pursuant to the notice hereto annexed, between the hours of .... o'clock .. m. and .. o'clock .. m., Kaneichi Nii, the witness named in said notice, and the said Kaneichi Nii being by me first duly cautioned and sworn to testify the whole truth,

and being carefully examined, deposed and said as in the foregoing annexed deposition set out.

I further certify that said deposition was begun on the .... day of ....., 1948, and continued from day to day until the .... day ....., 1948, when same was completed. [42]

I further certify that the said deposition was then and there reduced to typewriting by me, and was, after it had been reduced to typewriting, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that the reason why the said deposition was taken was that the said witness resides at 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, more than one hundred miles from Honolulu, Territory of Hawaii, the place where this cause is to be tried.

I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

I further certify that the fee for taking said deposition, \$...., has been paid to me by the plaintiff, and the same is just and reasonable.

Witness my hand and official seal at .....,  
....., Japan, this .... day ....., 1948.

.....

Consul of the United States  
of America.

[Endorsed]: Filed May 21, 1948. [43]

[Title of District Court and Cause.]

COMMISSION

The United States of America,  
District of Hawaii,  
Hawaiian Division—ss.

The President of the United States, to the Consul  
of the United States of America at Kobe, Hyogo  
Prefecture, Japan,

Greeting:

Whereas there is now pending before us a certain action in which Shoso Nii is plaintiff and Tom C. Clark, Attorney General as Successor to the Alien Property Custodian, is defendant, and it has been made known to us that the testimony of a witness, Kaneichi Nii, residing at 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, is necessary in order that full justice be done in the premises;

We therefore request that you cause the said witness to appear before you, or before some person by you for that purpose appointed, at a precise time and place, then and there to make answer on his oath or affirmation to the several interrogatories and cross-interrogatories hereunto annexed, and that you cause his deposition to be committed to writing, inclosed and sealed and returned to us, together with these present. [45]

Witness the Honorable J. Frank McLaughlin,

Judge of the District Court of the United States  
for the Territory of Hawaii.

.....

Clerk.

Dated May 2, 1948.

Approved as to form:

TOM C. CLARK,

Attorney General, as Successor to the Alien Prop-  
erty Custodian, Defendant.

RAY J. O'BRIEN,

United States Attorney, District of Hawaii, Attor-  
ney for Defendant.

By EDWARD A. TOWSE,

Assistant United States Attorney, District of Ha-  
waii. [46]

[Title of District Court and Cause.]

APPEARANCE OF COUNSEL

Comes now Leon R. Gross, Manager Hawaii Office, Office of Alien Property, Department of Justice, and enters his appearance as one of the attorneys for Tom C. Clark, Attorney General as Successor to the Alien Property Custodian, Defendant above named.

Dated: Honolulu, T. H., this 21st day of June, 1948.

/s/ LEON R. GROSS,

Manager, Hawaii Office, Office of Alien Property.

[Endorsed]: Filed July 21, 1948. [48]

---

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR PRE-  
TRIAL EXAMINATION OF SHOSO' NII,  
PLAINTIFF

Come now Shoso Nii, Plaintiff, by Shiro Kashiwa, Esq., his attorney, and Tom C. Clark, Attorney General as Successor to the Alien Property Custodian, Defendant, by Ray J. O'Brien, United States Attorney, District of Hawaii, and Leon R. Gross, Esq., his attorneys, and stipulate that the testimony of Shoso Nii shall be taken at Honolulu, Territory of Hawaii, on the 22nd day of July, 1948, before Marie A. Davison, a Notary Public in and for the First Judicial Circuit of the Territory of Hawaii at the hour of 1:30 o'clock p.m. on



said day in Room No. 319 of the Post Office Building in said Honolulu, pursuant to Rule 26 and Rule 27 of the Rules of Civil Procedure for the District Courts of the United States; and that the testimony of the said Shoso Nii, given at said time and place, shall be recorded and transcribed by Albert Grain, Court Reporter for the United States District Court for the Territory of Hawaii, [50] and that all costs incurred by virtue of the foregoing be taxed as costs of these proceedings.

Dated: Honolulu, T. H., this 21st day of June, 1948.

SHOSO NII,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney.

TOM C. CLARK,  
Attorney General as Successor to the Alien Property Custodian, Defendant.

By /s/ LEON R. GROSS,  
One of His Attorneys.

The foregoing stipulation is hereby approved and allowed:

.....

Judge, United States District  
Court.

[Endorsed]: Filed July 21, 1948. [51]

[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF TIME  
FOR FILING CROSS-INTERROGATORIES  
ON BEHALF OF DEFENDANT TOM C.  
CLARK, ATTORNEY GENERAL, AS SUC-  
CESSOR TO THE ALIEN PROPERTY CUS-  
TODIAN

It is hereby stipulated and agreed by and between Shoso Nii, Plaintiff, by Shiro Kashiwa, Esq., his attorney, and Tom C. Clark, Attorney General as Successor to the Alien Property Custodian, Defendant, by Ray J. O'Brien, United States Attorney, District of Hawaii, and Leon R. Gross, Esq., his attorneys, that the defendant may have to and including thirty days from and after the conclusion of the pre-trial examination of the plaintiff heretofore set to commence on the 22nd day of July, 1948, within which to file cross-interrogatories on behalf of the defendant herein pursuant to order of this Court dated the 13th day of May, 1948.

Dated: Honolulu, T. H., this 21st day of June, 1948.

Plaintiff.

By /s/ SHIRO KASHIWA,

His Attorney.

TOM C. CLARK,

Attorney General as Successor to the Alien Prop-  
erty Custodian, Defendant.

By /s/ LEON R. GROSS,

One of His Attorneys.

Allowed:

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District Court, Territory of  
Hawaii.

[Endorsed]: Filed July 21, 1948. [53]

---

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY  
JUDGMENT

To: Shiro Kashiwa, 307 Hawaiian Trust Bldg.,  
Honolulu 48, Hawaii, Attorney for Plaintiff:

You are hereby notified that on August 19th, 1948, at the opening of Court in the forenoon or as soon thereafter as counsel may be heard, we shall appear before His Honor, Judge J. Frank McLaughlin, in the room occupied by him as a Courtroom in the Federal Building, Honolulu, Territory of Hawaii, or in his absence before such other Judge as may be sitting in his place and stead and shall then and there request leave to file instanter a motion of the defendant Tom C. Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, for a summary judgment pursuant to the Rules of Civil Procedure of the United States District Courts and shall then and there request leave to file an affidavit in support of said motion. [55]

At the time and place aforesaid you may appear,  
if you see fit so to do.

RAY J. O'BRIEN,  
United States Attorney,  
District of Hawaii.

EDWARD A. TOWSE,  
Assistant United States Attorney, District of  
Hawaii.

LEON R. GROSS,  
Attorneys for Tom C. Clark.

By /s/ LEON R. GROSS.

Receipt is hereby acknowledged of a copy of the  
above and foregoing notice together with a copy of  
the motion and affidavit therein referred to this 17th  
day of August, 1948.

.....

[Endorsed]: Filed Aug. 18, 1948. [56]

---

[Title of District Court and Cause.]

MOTION TO STRIKE AFFIDAVIT OF  
LEON R. GROSS

Comes now Shoso Nii, Plaintiff above named, by  
his attorney, Shiro Kashiwa, and hereby moves to  
strike the Affidavit of Leon R. Gross in support  
of the Motion for Summary Judgment filed in the  
above-entitled court and cause on the following  
grounds:

## I.

That in Paragraphs 5, 6, 7, 8, first sentence of paragraph 10, paragraph 12, with relation to the statement made in the abstract as to the title, Paragraphs 13, 16 and 17 of the Affidavit facts which are not in the personal knowledge of the affiant are stated all contrary to paragraph 56 (e) of the Rule of Civil Procedure.

## II.

That the facts as stated in paragraphs 5, 6, 7, 8, first sentence of paragraph 10, paragraph 12 with relation to the statement made in the abstract as to the title, paragraphs 13, 16 and 17, are mere hearsay facts of which the affiant, Leon R. Gross, has no personal knowledge and is not competent to himself testify. [59]

## III.

That the facts stated in the following paragraphs would not and cannot be competent evidence at the trial of this cause: All of paragraphs 4, 14, 15 and 16.

## IV.

That none of the copies of the papers attached to the affidavit are properly certified as required by paragraph 56 (e) of the Rules of Civil Procedure.

Dated at Honolulu, T. H., this 21st day of August, A.D. 1948.

SHOSO NII,

Plaintiff.

By /s/ SHIRO KASHIWA,

His Attorney.

NOTICE OF MOTION

Please take notice that the foregoing Motion will be presented to the Honorable J. Frank McLaughlin at the hour of 10:00 o'clock a.m. on Tuesday, the 24th day of August, 1948, or as soon thereafter as counsel may be heard, in his Courtroom in the Federal Building, Honolulu, T. H.

Dated at Honolulu, T. H., this 21st day of August, 1948.

SHOSO NII,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 23, 1948. [60]



[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Now comes Tom C. Clark, Attorney General as Successor to the Alien Property Custodian, defendant, by Ray J. O'Brien, Edward A. Towse and Leon R. Gross, his attorneys, and respectfully moves this Honorable Court to enter a summary judgment in this case in favor of the defendant, and in support of said motion files the affidavit of Leon R. Gross, one of the Attorneys herein.

TOM C. CLARK,  
Attorney General, as Successor to the Alien Property Custodian, Defendant.

/s/ RAY J. O'BRIEN,

By /s/ EDWARD A. TOWSE,  
United States Attorneys,  
District of Hawaii.

/s/ EDWARD A. TOWSE,  
Assistant United States Attorney, District of  
Hawaii.

/s/ LEON R. GROSS,  
Attorney.

[Endorsed]: Filed Aug. 24, 1948. [62]

[Title of District Court and Cause.]

AFFIDAVIT OF LEON R. GROSS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

County and County of Honolulu,  
Territory of Hawaii—ss.

Leon R. Gross, being duly sworn, upon his oath deposes and states:

1. He is one of the Attorneys of Record for Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, defendant herein, and is duly authorized to make this affidavit.

2. Affiant is admitted to practice in the Federal District Court for the Territory of Hawaii.

3. Affiant was, effective May 15, 1948, appointed as Manager for the Hawaii office, Office of Alien Property, Department of Justice, and is presently acting in such capacity.

4. Affiant has studied the files and records of the Department of Justice in the instant law suit. On July 22, 1948, affiant examined the plaintiff, Shoso Nii, under oath, pursuant to Rule 26 of the Rules of Civil Procedure for the District Courts of the United States. Affiant has also caused extended investigation to be made of the facts involved in the controversy, and, based upon his investigation, examination and [65] knowledge, alleges the following facts which affiant claims are undisputed and are legally sufficient for this Honorable Court to enter a summary judgment for the defendant.

5. Kaneichi Nii, plaintiff's father, and a citizen of Japan, resided in Honolulu, Territory of Hawaii, for many years. In 1935 Kaneichi Nii returned to Japan and has resided in Japan until the present date. During his residence in Honolulu, Kaneichi Nii acquired certain property located at Waipahu, Oahu, Territory of Hawaii (hereinafter more specifically described).

6. On January 2, 1933, Kaneichi Nii executed a bill of sale in favor of his son Shoso Nii, the plaintiff herein, for, "That certain store in Waipahu, aforesaid known as "K. Nii Shoten," together with all of the automobiles, furnitures, fixtures, goods, wares and merchandise, books and accounts receivable, now being in and used in that certain store, aforesaid." Said bill of sale was recorded in Liber 1205, page 26 of record, on May 26, 1933, in the Office of the Registrar of Conveyances. A copy of the bill of sale is attached hereto as "Exhibit 1."

7. On the 27th day of December, 1932, Kaneichi Nii purchased from T. Ota and Yosu Ota, his wife, a parcel of real estate located in Waipahu, Oahu, and the property was conveyed by deed dated December 27, 1932, from T. Ota and Yosu Ota, his wife, to Kaneichi Nii. The deed was recorded in the Office of the Registrar of Conveyances in Liber 1189, page 91, on December 27, 1932. A copy of said deed is attached hereto and made a part hereof as "Exhibit 2." [66]

8. On the 23rd day of July, 1938, Kaneichi Nii purchased from T. Ota, a parcel of real estate located in Waipahu, Oahu, and the parcel was con-

veyed by deed dated July 23, 1938, from T. Ota and Yosu Ota, his wife, to Kaneichi Nii, recorded July 23, 1938, in Liber 1451, page 418, of records in the Office of the Registrar of Conveyances. A copy of said deed is attached hereto and made a part hereof as "Exhibit 3."

9. By Vesting Order dated September 12, 1947, being number 9777, the Attorney General of the United States as Successor to the Alien Property Custodian under the Authority of the Trading with the Enemy Act, as amended, vested the parcels of real estate referred to in paragraphs 7 and 8 above as property of Kaneichi Nii, a resident and a national of Japan. A copy of said Vesting Order is attached to the complaint filed herein and incorporated herein by reference as "Exhibit 4."

10. Shoso Nii, the plaintiff herein and son of Kaneichi Nii, was born in Waipahu, Oahu, on January 3, 1914, and left the Hawaiian Islands for Japan in July, 1941. Shoso Nii lived in Japan during all the intervening period from July, 1941, and returned to the Territory of Hawaii on November 8, 1947. On January 5, 1948, the plaintiff filed the instant suit under Section 9(a) of the Trading with the Enemy Act, as amended and alleged among other things:

"That the plaintiff's father is Kaneichi Nii; that said Kaneichi Nii is a citizen of Japan and has been continuously residing in Japan since May, 1935, to the date hereof; that prior to on or about May, 1935, said Kaneichi Nii resided for a long period of time at Waipahu aforesaid and operated

a general merchandise store known as the "K. Nii Store" at Waipahu aforesaid; that due to his business ability, hard work and thrifty habits said Kaneichi Nii acquired considerable real property holdings in Waipahu aforesaid and accumulated a sizable estate for himself; that [67] in May of 1935 said Kaneichi Nii decided to retire from active business and returned to Japan; that at the time he returned to Japan he left and gave by way of gift everything he left in the Territory of Hawaii to his only son, the plaintiff herein; and that the general merchandise store was turned over to the plaintiff by a duly executed bill of sale."

11. In Paragraph VII of said complaint it is alleged:

"That with relation to the real property aforescribed in paragraph VI although it was orally given to the plaintiff, there was never a deed executed in favor of the plaintiff from his father."

12. The Office of Alien Property, Department of Justice, as Successor to the Alien Property Custodian, has in its possession an abstract of Makinney & Company, Abstractors, Honolulu, Territory of Hawaii, dated March 31, 1948, showing that prior to vesting the record title, to the subject real estate was in Kaneichi Nii (Exhibit 7).

13. As of February 7, 1939, Kaneichi Nii and Saku Nii, his wife, father and mother, respectively, of Shoso Nii, the plaintiff herein, executed before William C. Affeld, Jr., Vice Counsel of the United States at Kobe, Japan, their respective powers of attorney running to Shoso Nii, the plaintiff, which



powers of attorney are recorded in the Office of the Registrar of Conveyances for Honolulu, Territory of Hawaii, in Liber 1503, pages 190 to 197, inclusive. A copy of the powers of attorney are attached hereto and incorporated herein by reference as "Exhibit 5 and 6, respectively."

14. In the examination conducted on July 22, 1948, pursuant to Rule 26 of the Rules of Civil Procedure for the District Courts of the United States, the plaintiff Shoso Nii testified under oath as follows: [68]

Q. When you were over in Japan with your father from 1941 to 1947, did you at any time tell him that you had found out the title of this real estate was not in yourself?      A. No, sir.

Q. You did not?      A. No.

Q. And why didn't you?

A. Because I didn't find any necessity in the name being changed.

15. Affiant respectfully urges upon this Honorable Court that the undisputed facts which are matters of record, conclusively demonstrate that at the time of the service of Vesting Order Number 9777 the real estate and improvements which are the subject matter of this law suit were as described in said Vesting Order, "property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national, Kaneichi Nii, of a designated



enemy country (Japan)'' and subject to being vested by the defendant pursuant to the powers conferred upon him by the Trading with the Enemy Act, as amended, and Executive Orders of the President of the United States issued pursuant thereto and in enforcement thereof.

16. The undisputed record shows that Kaneichi Nii did not give the plaintiff, his son Shoso Nii, the real estate in May, 1935, as alleged in the complaint filed herein. The undisputed facts further show that in 1938, after his return to Japan, when Kaneichi Nii purchased additional real estate, that title to the real estate was taken in the name of Kaneichi Nii and not in his son, the plaintiff herein. [69]

17. The undisputed facts further show that on date of February 7, 1939, Kaneichi Nii and his wife, Saku Nii, made, executed and delivered powers of attorney to their son, Shoso Nii, plaintiff herein, and on the effective date of the vesting order in this case in September, 1947, record title to the subject real estate was in Kaneichi Nii.

Affiant respectfully submits to this Court that the facts which are proven by instruments of record (exhibits to this affidavit) demonstrate conclusively that the plaintiff, Shoso Nii is not entitled to the relief prayed for in his complaint or any part thereof and that a judgment should be entered in favor of the defendant with costs assessed against the plaintiff.

/s/ LEON R. GROSS.

Subscribed to and sworn before me this 17th day of August, 1948.

(Seal)            /s/ Illegible.

Deputy Clerk, United States District Court for the Territory of Hawaii. [70]

EXHIBIT No. 1

BILL OF SALE

Kaneichi Nii

Shoso Nii

Liber 1205, Page 26.

Know All Men by These Presents: That I, Kaneichi Nii, of Waipahu, City and County of Honolulu, Territory of Hawaii, being in conducting a general merchandise store known as "K. Nii Shoten," which situates in Waipahu, aforesaid, the party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), to him in hand paid by Shoso Nii, of the same place, the party of the second part, the receipt whereof is hereby acknowledged, and in consideration of love and affection, does hereby bargain, sell, assign, transfer and set over unto the said party of the second part, his heirs, executors, administrators and assigns that certain store in Waipahu, aforesaid known as "K. Nii Shoten" together with all of the automobiles, furniture, fixtures, goods, wares and merchandise, books and accounts receivable, now being in and used in that certain store, aforesaid.

To Have and to Hold the said property unto the party of the second part, his heirs, executors, admin-

istrators and assigns, for his and their own use and behoof forever.

And Shoso Nii, the party of the second part, as further consideration, does hereby agree to pay all of the accounts payable for goods, wares, and merchandise purchased, now owing by the party of the first part, in connection with the said business. [72]

In Witness Whereof the said parties hereunto set their hands and seal on this 2nd day of January, A. D. 1933.

/s/ Japanese Signature  
(NII KANEICHI),  
Party of the first part.

/s/ SHOSO NII,  
Party of the second part.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 2nd day of January, A. D. 1933, before me personally appeared Kaneichi Nii, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

(Seal) /s/ THOMAS J. WATARAI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 2nd day of January, A. D. 1933, before

me personally appeared Shoso Nii, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

(Seal)           /s/ THOMAS J. WATARAI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

Entered of Record this 26th day of May, A. D.  
1933, at 8:30 o'clock a.m. and compared. Carl F.  
Wikander, Registrar of Conveyances.

By /s/ Illegible,  
Clerk. [73]

Bureau of Conveyances  
Territory of Hawaii

Honolulu, Hawaii, August 5, 1948

The foregoing is a true photostatic copy of the record, recorded in the Bureau of Conveyances of the Territory of Hawaii, in liber 1205 on pages 26-27.

Attest:

(Seal)           /s/ D. M. HUCHESTEIN,  
Registrar of Conveyances for the Territory of  
Hawaii. [74]

EXHIBIT No. 2

(Copy)

Liber 1189, Page 91

Know All Men by These Presents: That T. Ota  
(k) of Waipahu, District of Ewa, City and County

of Honolulu, Territory of Hawaii, Grantor, for and in consideration of the sum of Two Thousand Two Hundred Fifty and No./100 Dollars (\$2,250.00) lawful money of the United States of America to him paid by Kaneichi Nii of Waipahu, aforesaid, Grantee, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the said Grantee, his heirs and assigns:

All of that certain piece or parcel of land situate, lying and being at Ohua, Waikele, Ewa, Oahu, T.H., being Lot "A" portion of R. P. 5694 L. C. Aw. 6545, Apana 1 to H. Haalilio, and a portion of Boundary Certificate No. 20 to John Hamauku, and described as follows:

Beginning at the Southeast corner of this piece of land on the West bank of the Kapakahi Stream, being also the Northwest end of present wooden bridge, the true azimuth and distance of the said point to a pipe driven at the Northwest corner of Lot 10, Land Court Application 779 being  $339^{\circ} 06'$  28.75 feet, and running by azimuths measured clockwise from true South:

1.  $105^{\circ} 50'$  170.00 feet along the North side of right of way;

2.  $15^{\circ} 50'$  14.80 feet along the West end of right of way;

3.  $105^{\circ} 50'$  105.80 feet along the remaining portion of R.P. 5694 L. C. Aw. 6545 Apana 1 to H. Haalilio, to a pipe;

4.  $199^{\circ} 50'$  140.10 feet along the same, to a pipe;

5.  $294^{\circ} 16'$  218.60 feet along the South bank of the Kapakahi Stream;

6.  $311^{\circ} 48' 25.54$  feet along the West bank of the Kapakahi Stream;

7.  $348^{\circ} 10' 61.30$  feet along the West bank of the Kapakahi Stream;

8.  $19^{\circ} 14' 27.50$  feet along the West bank of the Kapakahi Stream, to the point of beginning and containing an area of 29,200 square feet, or 0.670 Acres, more or less.

Together with the additional right to use the right of way in common with the owners and occupants of this lot and the remaining portion of R.P. 5694 L. C. Aw. 6545 Apana 1 to H. Haalilio for a road purpose, which right of way is described as follows: [76]

Beginning at the Northeast corner of this piece of land on the West bank of the Kapakahi Stream, the true azimuth and distance to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06' 17.46$  feet along the West bank of the Kapakahi Stream;

2.  $105^{\circ} 50' 181.04$  feet along the remaining portion of R. P. 5694 L. C. Aw. 6545 Apana 1 to H. Haalilio;

3.  $195^{\circ} 50' 14.80$  feet along Lot "A";

4.  $285^{\circ} 50' 170.00$  feet, to the point of beginning and containing the area of 2,598 square feet, more or less.

Together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in any wise appertaining, and the reversion



and reversions, remainder and remainders, rents issues and profits thereof.

To Have and to Hold the same, together with all the rights, privileges, and appurtenances thereunto belonging, unto the said Grantee, his heirs and assigns, forever.

And the Said Grantor, for himself, his heirs and assigns hereby covenants with the said Grantee, his heirs and assigns that he is lawfully seized in fee simple of the granted premises; that he has good right to sell and convey the same as aforesaid; that the same are free and clear of all encumbrances, Save and Except the taxes for the year 1932, which is to be pro-rated; and that he will and his heirs and assigns shall Warrant and Defend the same unto the said Grantee, his heirs and assigns forever.

And for the consideration aforesaid, I, Yasu Ota, wife of the Grantor, do hereby remise, release and forever quitclaim unto the said Grantee, his heirs and assigns forever, all my right or possibility of dower in and to the afore-granted [77] premises.

In Witness Whereof, the said T. Ota and Yasu Ota, husband and wife, have hereunto set their hands and seals this 27th day of December, A. D. 1932.

(Seal)            /s/ T. OTA

(Seal)            /s/ YASU OTA.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 27th day of December, A. D. 1932, before me personally appeared T. Ota and Yasu Ota, hus-

band and wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

/s/ GIICHI MIWA,

Notary Public, First Judicial Circuit, Territory of Hawaii.

Entered of record this 27th day of December, A.D. 1932, at 2:22 o'clock p.m. and compared. Carl F. Wikander, Registrar of Conveyances. [78]

### EXHIBIT No. 3

Know All Men by These Presents: That T. Ota (k) of Waipahu, District of Ewa, City and County of Honolulu, Territory of Hawaii, Grantor, for and in consideration of the sum of One Hundred and No/100 Dollars (\$100.00) lawful money of the United States of America to him paid by Kaneichi Nii of Waipahu, aforesaid, Grantee, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the said Grantee, his heirs and assigns:

All of that certain piece or parcel of land situate, lying and being at Ohua, Waikele, Ewa, Oahu, T. H., being portion of R. P. 5694 L. C. Aw. 6545, Apana 1 to H. Haalilio, and a portion of Boundary Certificate No. 20 to John Hamauku, and described as follows:

Beginning at the Northeast corner of this piece of land the true azimuth and distance of the said point of beginning from a pipe driven at the North-

west corner of Lot 10, Land Court Appl. 779, by traverses, being; (a)  $159^{\circ} 06' 28.75$  feet and (b)  $105^{\circ} 50' 30.0$  feet, and running by azimuths measured clockwise from true South:

1.  $15^{\circ} 50' 14.8$  feet;
2.  $105^{\circ} 50' 140.0$  feet;
3.  $195^{\circ} 50' 14.8$  feet;
4.  $285^{\circ} 50' 140.0$  feet to the point of beginning and containing an area of 2.072 square feet. Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the Owners and occupants of the above-mentioned lot and the remaining portion of L. C. Aw. 6545 Apana 1 to H. Haalilio for a road purpose only, which Right of Way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of the Kapakahi Stream, the true azimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06' 17.46$  feet along the West bank of the Kapakahi Stream;
2.  $105^{\circ} 50' 41.04$  feet;
3.  $195^{\circ} 50' 14.80$  feet;
4.  $285^{\circ} 50' 30.00$  feet to the point of beginning and containing an area of 526 square feet.

Together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in any wise appertaining, and the reversion

and reversions, remainder and remainders, rents issues and profits thereof.

To Have and to Hold the same, together with all the rights, privileges, and appurtenances thereunto belonging, unto the said Grantee, his heirs and assigns, forever.

And the Said Grantor, for himself, his heirs and assigns hereby covenants with the said Grantee, his heirs and assigns that he is lawfully seized in fee simple of the granted premises; that he has good right to sell and convey the same as aforesaid; that the same are free and clear of all encumbrances, Save and Except the taxes for the year 1938, which is to be pro-rated; and that he will and his heirs and assigns shall Warrant and Defend the same unto the said Grantee, his heirs and assigns forever.

And for the consideration aforesaid, Yasu Ota, wife of the Grantor, does hereby remise, release and forever quitclaim unto the said Grantee, his heirs and assigns forever, all of her right or possibility of dower in and to the aforegranted premises.

In Witness Whereof, the said T. Ota and Yasu Ota, husband and wife, have hereunto set their hands and seals this 23rd day of July, A. D. 1938.

(Seal)           /s/ T. OTA

(Seal)           /s/ YASU OTA. [81]

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 23rd day of July, A. D. 1938, before me personally appeared T. Ota and Yasu Ota, husband and wife, to me known to be the persons described

in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(Seal)           /s/ GIICHI MIWA,

Notary Public, First Judicial Circuit, Territory of  
Hawaii.

Entered of Record this 23rd day of July, A. D. 1938, at 9:35 o'clock a.m. and compared. Mark N. Huckestein, Registrar of Conveyances. [82]

[Printer's Note: Exhibit No. 4 is similar to Exhibit "A" attached to Complaint, and set out in full at page 13 of this printed Record.]

#### EXHIBIT No. 5

Liber 1503, Page 194.

#### POWER OF ATTORNEY

Know All Men by These Presents: That I, Saku Nii (w), formerly of Honolulu, City and County of Honolulu, Territory of Hawaii, and now residing in the Prefecture of Hiroshima, Empire of Japan, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Shoso Nii, of Waipahu, said City and County of Honolulu, my true and lawful attorney, for me and in my name, place and stead, and for my use and benefit in said Territory of Hawaii, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, rents, interests, dividends, annuities, choses in ac-



tion and demands whatsoever as are now or shall hereafter become due, owing, payable or belong to me; and have use and take all lawful ways and means in his or my name, or otherwise, for the recovery thereof, by attachment, arrest, distress, suits at law or in equity, or otherwise, with full power and authority to compromise and agree for the same, and give acquitances, receipts or other sufficient discharges for the same; for me and in my name to make, sign, seal, acknowledge, execute and deliver; to bargain, contract, agree for, purchase, receive and take,—lands, tenements and hereditaments, and accept the seizing and possession of all lands, tenements and hereditaments, and all deeds and other documents and assurances in the law therefor; and to lease, let, demise, bargain, sell, release, remise, convey, mortgage and hypothecate lands, tenements and hereditaments upon such terms and conditions, and under such covenants as he shall think fit, or to release and convey my right or possibility of dower in and to any and all real estate and leaseholds in which I may now have or may hereafter acquire such right or possibility of dower and to execute, acknowledge and deliver such releases or other instruments under seal or otherwise, which may be necessary or proper to effectuate such release or conveyance; also to bargain and agree for, buy, sell, [88] mortgage, vote, hypothecate, borrow, indorse, draw and in any and every way and manner deal in and with goods, wares, merchandise, choses in action, bonds, stocks, checks, moneys, certificates of deposit, notes, bills of exchange, chattels,



effects, furniture, animals, vehicles, tools, implements, and all other kinds of personal property in possession or in action, the particular enumeration above notwithstanding; and to make, do and transact all and every kind of business of whatever nature and kind soever; and also for me and in my name and as my act and deed, to sign, seal, execute, acknowledge and deliver such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bonds, notes, certificates of deposit, stocks and shares in corporations, receipts, proxies to vote at corporate meetings, checks, evidences of debt, releases and satisfaction of mortgages, judgments and other debts, and all other instruments in writing of whatever kind and nature as may be necessary or proper in the premises; with full power and authority to bring suits at law or in equity or otherwise for all or any property and /or/ property rights, whether real or personal belonging to me or which may hereafter belong to me or in which I may be or become interested or have or acquire title to, and with full power and authority to compromise and /or/ settle any such suits or actions upon such terms as he may think best; and also with full power and authority to defend all suits or actions brought against me or brought concerning any property or property right belonging to me or to hereafter belong to me or in which I may have an interest, and to accept and /or/ waive service of papers or process; with full power and authority to submit any matter in which I may be

interested or am interested in whether concerning real or personal property to arbitration upon such **terms and conditions** as he shall think best, and to agree to and abide by the decision of any such arbitrators and to take all steps necessary or proper to effectuate any such decisions or awards. [89]

Giving and Granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite necessary or proper to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, and hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof I have hereunto set my hand and seal this seventh day of February, A. D. 1939.

(Seal)                      Japanese Characters,  
                                    (Saku Nii)

Executed in the presence of and witnessed by:

/s/ TSUTA KAWAMOTE.  
American Consulate, Kobe. [90]

Certificate of Acknowledgment of Execution  
of Document

Empire of Japan,  
Prefecture of Hyogo, City of Kobe,  
Consulate of the United States of America—ss:

I, Wm. C. Affeld, Jr., Vice Consul of the United States of America at Kobe, Japan, duly commis-

sioned and qualified, do hereby certify that on this 7th day of February, 1939, before me personally appeared Saku Nii to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument she duly acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

(Seal)            /s/ WM. C. AFFELD, JR.,  
Vice Consul of the United  
States of America.

Fee No. 33, Two Dollars.

Service No. 466. Fee \$2.00 United States gold, equal to Yen 7.48 local currency paid by affixing stamps to this document.

#### EXHIBIT No. 6

Liber 1503, Page 190.

#### POWER OF ATTORNEY

Know All Men by These Presents: That I, Kanei-chi Nii (k), formerly of Honolulu, City and County of Honolulu, Territory of Hawaii, and now residing in the Prefecture of Hiroshima, Empire of Japan, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Shoso Nii, of Waipahu, said City and County of Honolulu, my true and lawful attorney, for me and in

my name, place and stead, and for my use and benefit in said Territory of Hawaii, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, rents, interests, dividends, annuities, choses in action and demands whatsoever as are now or shall hereafter become due, owing, payable or belong to me; and have use and take all lawful ways and means in his or my name, or otherwise, for the recovery thereof, by attachment, arrest, distress, suits at law or in equity, or otherwise, with full power and authority to compromise and agree for the same, and give acquaintances, receipts or other sufficient discharge for the same; for me and in my name to make, sign, seal, acknowledge, execute and deliver; to bargain, contract, agree for purchase, receive and take,—lands, tenements and hereditaments, and accept the seizing and possession of all lands, tenements and hereditaments, and all deeds and other documents and assurances in the therefor; and to lease, let, demise, bargain, sell, release, remise, convey, mortgage and hypothecate lands, tenements and hereditaments upon such terms and conditions, and under such covenants as he shall think fit, or to consent to the conveyance by my wife of any and all real estate and leaseholds and to release and convey my right, title and interest, whether by way of courtesy or otherwise, in and to such real estate and leaseholds in which I may now have or hereafter acquire such right, title and interest therein and thereto and to execute, acknowledge and deliver such releases or other instruments under seal or

otherwise which may be necessary or proper to effectuate such release or conveyance; also to bargain and agree [92] for, buy, sell, mortgage, vote, hypothecate, borrow, indorse, draw and in any and every way and manner deal in and with goods, wares, merchandise, choses in action, bonds, stocks, checks, moneys, certificates of deposit, notes, bills of exchange, chattels, effects, furniture, animals, vehicles, tools, implements, and all other kinds of personal property in possession or in action, the particular enumeration above notwithstanding; and to make, do and transact all and every kind of business of whatever nature and kind soever; and also for me and in my name and as my act and deed, to sign, seal, execute, acknowledge and deliver such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bonds, notes, certificates of deposit, stocks and shares in corporations, receipts, proxies to vote at corporate meetings, checks, evidences of debt, releases and satisfaction of mortgages, judgments and other debts, and all other instruments in writing of whatever kind and nature as may be necessary or proper in the premises; with full power and authority to bring suits at law or in equity or otherwise for all or any property and /or/ property rights, whether real or personal belonging to me or which may hereafter belong to me or in which I may be or become interested or have or acquire title to, and with full power and authority to compromise and /or/ settle any such suits or actions upon such terms as he may



think best; and also with full power and authority to defend all suits or actions brought against me or brought concerning any property or property right belonging to me or to hereafter belong to me or in which I may have an interest, and to accept and /or/ waive service of papers or process: with full power and authority to submit any matter in which I may be interested or am interested in whether concerning real or personal property to arbitration upon such terms and conditions as he shall think best, and to agree to and abide by the decision of any such arbitrators and to take all steps necessary or proper to effectuate any such decisions or awards. [93]

Giving and Granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite necessary or proper to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, and hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof I have hereunto set my hand and seal this seventh day of February, A. D. 1939.

(Seal)

Japanese Characters  
(Kaneichi Nii)

Executed in the presence of and witnessed by:

/s/ TSUTA KAWAMOTE,  
American Consulate,  
Kobe, Japan. [94]



Certificate of Acknowledgment of Execution  
of Document

Empire of Japan,

Prefecture of Hyogo, City of Kobe,

Consulate of the United States of America—ss:

I, Wm. C. Affeld, Jr., Vice Consul of the United States of America at Kobe, Japan, duly commissioned and qualified, do hereby certify that on this 7th day of February, 1939, before me personally appeared Kaneichi Nii, to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

(Seal)      /s/ WM. C. AFFELD, JR.,  
Vice Consul of the United  
States of America.

Fee No. 33, Two Dollars.

Service No. 465. Fee \$2.00 United States gold, equal to Yen 7.48 local currency paid by affixing stamps to this document.

## EXHIBIT No. 7

(Copy)

Honolulu,  
Oahu—ss.

We hereby certify that we have carefully examined the Indexes in the Offices of the Clerks of the Supreme Court, Circuit Court of the First Judicial Circuit, Tax Assessor and Registrar of Conveyances, as to the title of Kaneichi Nii in and to:—  
First: All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Oahu, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, being Lot “A,” and thus bounded and described:—

Beginning at the Southeast corner of this piece of land on the West bank of the Kapakahi Stream, being also the Northwest end of present wooden bridge, the true azimuth and distance of the said point to a pipe driven at the Northwest corner [96] of Lot 10, Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true south:—

1.  $105^{\circ} 50'$  170.00 feet along the North side of right of way;
2.  $15^{\circ} 50'$  14.80 feet along the West side of right of way;
3.  $105^{\circ} 50'$  105.80 feet along the remaining portion of R.P. 5694 L.C. Aw. 6545 Apana 1 to H. Haalilio, to a pipe;

4.  $199^{\circ} 50'$  140.10 feet along the same, to a pipe;
5.  $294^{\circ} 16'$  218.60 feet along the South bank of the Kapakahi Stream;
6.  $311^{\circ} 48'$  25.54 feet along the West bank of the Kapakahi Stream;
7.  $348^{\circ} 10'$  61.30 feet along the West bank of the Kapakahi Stream;
8.  $19^{\circ} 14'$  27.50 feet along the West bank of the Kapakahi Stream to the point of beginning.

Containing an Area of 29,200 Square Feet, or 0.670 Acre, or thereabouts.

Together with the additional right to use the right of way in common with the owners and occupants of this lot and the remaining portion of R. P. 5694 L.C. Aw. 6545 Apana 1 to H. Haalilio for a road purpose, which right of way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of Kapakahi Stream, the true azimuth and [97] distance to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06'$  28.75 feet, and running by azimuths measured clockwise from true South:—

1.  $339^{\circ} 06'$  17.46 feet along the West bank of the Kapakahi Stream;
2.  $105^{\circ} 50'$  181.04 feet along the remaining portion of R.P. 5694 L.C. Aw. 6545 Apana 1 to H. Haalilio;
3.  $195^{\circ} 50'$  14.80 feet along Lot "A";
4.  $285^{\circ} 50'$  170.00 feet to the point of beginning.

Containing an Area of 2,598 Square Feet, or thereabouts.

Said above described premises having been con-

veyed to the said Kaneichi Nii by T. Ota (k), by Deed dated December 27th, A.D. 1932, and recorded in the Office of the Registrar of Conveyances at Honolulu in Liber 1189 on Pages 91-93 on December 27th, A.D. 1932, at 2:22 o'clock p.m.

Second: All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, and thus bounded and described:

Beginning at the Northeast corner of this piece of [98] land the true azimuth and distance of the said point of beginning from a pipe driven at the Northwest corner of Lot 10, Land Court Appl. 779, by traverses, being: (a)  $159^{\circ} 06' 28.75$  feet and (b)  $105^{\circ} 50' 30.0$  feet, and running by azimuths measured clockwise from true South:

1.  $15^{\circ} 50' 14.8$  feet;
2.  $105^{\circ} 50' 140.0$  feet;
3.  $195^{\circ} 50' 14.8$  feet;
4.  $285^{\circ} 50' 140.0$  feet to the point of beginning.

Containing an Area of 2072 Square Feet, or thereabouts.

Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the owners and occupants of the above-mentioned lot and the remaining portion of L. C. Aw. 6545 Apana 1 to H. Haalilio for a road purpose only, which Right of Way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of the Kapakahi Stream, the true tzimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06'$  28.75 feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06'$  17.46 feet along the West bank of the Kapakahi Stream;
2.  $105^{\circ} 50'$  41.04 feet;
3.  $195^{\circ} 50'$  14.80 feet; [99]
4.  $285^{\circ} 50'$  30.00 feet to the point of beginning.

Containing an Area of 526 Square Feet, or thereabouts.

Said above described premises having been conveyed to the said Kaneichi Nii by T. Ota (k), by Deed dated July 23rd, A.D. 1938, and recorded in said Registry Office in Liber 1451 on Pages 418-420 on July 23rd, A.D. 1938, at 9:35 o'clock a.m.

(Note: Attention is called to the fact that the parcels of land hereinabove described as "Second" with respective areas of 2072 Square Feet and 526 Square Feet lie wholly, within and comprise the entire easement area described in "First" with an Area of 2598 Square Feet.)

And We further certify that there are no liens or encumbrances of whatsoever kind or nature against said title, save and except the following, to-wit:

#### TAXES

The Abstractors have been informed at the Office of [100] Tax Assessor that all taxes assessed against

the lands under search have been fully paid up to and including December 31st, A.D. 1947.

Taxes for the year 1948 are now a lien.

Key: Zone, 9; Section, 4; Plat, 14; Parcel, 9.

Area Assessed: 31,272 Sq. Ft. Assessed Valuations: Real Property, \$362.00; Improvements, \$1311.00; \$2173.00

And We further certify that the legal title to said parcel of land is vested in the said Kaneichi Nii, as shown by said Indexes, Subject, However, as Afore-said.

Kaneichi Nii (k) to Shoso Nii.

Power of Attorney: Dated: February 7th, A. D. 1939, Vol. 1503, Page 190. [101]

#### General Powers

(Recorded: February 27th, A.D. 1939 at 10:17 a.m.)

Saku Nii (w) to Shoso Nii.

Power of Attorney: Dated: February 7th, A.D. 1939, Vol. 1503, Page 194.

#### General Powers

(Recorded: February 27th, A.D. 1939, at 10:18 a.m.)

In Witness Whereof, We have hereunto set our hand this Thirty-first day of March, A.D. Nineteen Hundred Forty-Eight (1948) at 1:12 o'clock p.m.

MAKINNEY & COMPANY,

By /s/ KENNETH MAKINNEY,

[Endorsed]: Filed Aug. 24, 1948. [102]



[Title of District Court and Cause.]

City and County of Honolulu,  
Territory of Hawaii—ss.

Albert K. Makinney, being duly sworn upon his oath, deposes and states:

1. That he is a duly licensed and empowered abstractor to make and prepare Certificates of Title under the provisions of Section 7501 of the Revised Laws of Hawaii, 1945, and that attached hereto and made a part of this affidavit is an abstract prepared by this affiant relating to certain real estate located in the District of Ewa, City and County of Honolulu, Territory of Hawaii.

/s/ ALBERT K. MAKINNEY.

Subscribed and sworn to before me this 30th day of August, 1948.

(Seal) /s/ JOSEPH K. ARAKI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires April 25, 1952.

Filed Aug. 30, 1948, at 2 o'clock and 15 minutes  
p.m. Wm. F. Thompson, Jr., Clerk. [104]

Honolulu, Oahu—ss.

We hereby certify that we have carefully examined the Indexes in the Offices of the Clerks of the Supreme Court, Circuit Court of the First Judicial Circuit, Tax Assessor and Registrar of Conveyances, as to the title of the Attorney General of the United States,

in and to: All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, being Lot "A", and thus bounded and described:

Parcel No. 1

Beginning at the Southeast corner of this piece of land on the West bank of the Kapakahi Stream, being also the Northwest end of present wooden bridge, the true azimuth and distance [105] of the said point to a pipe driven at the Northwest corner of Lot 10, Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true South:

1.  $105^{\circ} 50' 170$  feet along the North side of right of way;
2.  $15^{\circ} 50' 14.80$  feet along the West end of right of way;
3.  $105^{\circ} 50' 105.80$  feet along the remaining portion of R.P. 5694 L.C. Aw. 6545 Apana 1 to H. Haalilio, to a pipe;
4.  $199^{\circ} 50' 140.10$  feet along the same, to a pipe;
5.  $294^{\circ} 16' 218.60$  feet along the South bank of the Kapakahi Stream;
6.  $311^{\circ} 48' 25.54$  feet along the West bank of the Kapakahi Stream;
7.  $348^{\circ} 10' 61.30$  feet along the West bank of the Kapakahi Stream;
8.  $19^{\circ} 14' 27.50$  feet along the West bank of the Kapakahi Stream, to the point of beginning.

Containing an Area of 29,200 Square Feet, or 0.670 Acre, or thereabouts.

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary, Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, and thus bounded and described: [106]

Parcel No. 2

Beginning at the Northeast corner of this piece of land the true azimuth and distance of the said point of beginning from a pipe driven at the Northwest corner of Lot 10, Land Court Appl. 779, by traverse, being: (a)  $159^{\circ} 06' 28.75$  feet and (b)  $105^{\circ} 50' 30.0$  feet, and running by azimuths measured clockwise from true South:

1.  $15^{\circ} 50' 14.8$  feet;
2.  $105^{\circ} 50' 140.0$  feet;
3.  $195^{\circ} 50' 14.8$  feet;
4.  $285^{\circ} 50' 140.0$  feet to the point of beginning.

Containing an Area of 2,072 Square Feet, or thereabouts.

Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the owners and occupants of the above-mentioned lot and the remaining portion of L.C. Aw. 6545 Apana 1 to H. Haalilio for a road purpose only, which Right of Way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of the Kapakahi Stream, the true azimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of

Lot 10 of Land Court Application 779 being  $339^{\circ} 06'$  28.75 feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06'$  17.46 feet along the West bank of the Kapakahi Stream; [107]
2.  $105^{\circ} 50'$  41.04 feet;
3.  $195^{\circ} 50'$  14.80 feet;
4.  $285^{\circ} 50'$  30.00 feet to the point of beginning and containing an area of 526 square feet.

Said above described premises having become vested in the Attorney General of the United States by Vesting Order dated September 12th, 1947, and recorded in the Office of the Registrar of Conveyances at Honolulu in Liber 2070 on Pages 61-64.

And we further certify that there are no liens or encumbrances of whatsoever kind or nature against said title, or proceedings of record affecting the same, save and except the following, to-wit:

In the United States District Court  
For the Territory of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General as successor to  
the Alien Property Custodian,

Defendant.

The following proceedings were had in the above entitled matter, to-wit:

1948

January 5—File Complaint of Shoso Nii. Prays

that the lands under search be returned to him as it was orally given to him by his father, Kaneichi Nii, etc.

February 27—File Stipulation and order Enlarging Time.

May 3—File Answer of Tom C. Clark.

May 6—File Answer of Shoso Nii to Counter Claim.

May 11—File Motion for Issuance of Commission To Take Deposition, Notice of Motion and Affidavit of Shiro Kashiwa.

May 13—File Order of Motion For Issuance of Commission To Take Deposition.

July 21—File Appearance of Leon R. Gross, counsel for Tom C. Clark.

July 21—File Stipulation and Order for Pre-Trial Examination of Shoso Nii, Plaintiff.

July 21—File Stipulation for Extension of Time For Filing Cross-Interrogatories On Behalf of Defendant Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian.

August 18—File Notice of Motion For Summary Judgment.

August 18—File Affidavit of Service. [109]

August 23—File Motion To Strike Affidavit of Leon R. Gross and Notice of Motion.

August 24—File Motion For Summary Judgment in favor of Defendant.

August 24—File Affidavit of Leon R. Gross In Support of Motion For Summary Judgment.

### TAXES

The Abstractors have been informed at the Office of the Tax Assessor that all taxes assessed against



the lands under search have been fully paid, save and except the first installment for the year 1948, which is delinquent and unpaid and together with penalty and interest amounts to the sum of \$40.19. The second installment amounting to the sum of \$36.05 is now due and payable and unless sooner paid will be delinquent after November 20th, 1948.

Key—Zone: 9; Section: 4; Plat: 14; Parcel: 9.

Assessed Valuations—Area Assessed: 31,272 sq. ft.; Real Property: \$862.00; Improvements: \$1,311.00; \$2,173.00. [110]

The Abstractors have likewise been informed at the Office of the Tax Assessor that all taxes assessed against the parcel of land known as “Right of Way” with an area of 526 square feet have been fully paid, save and except the first installment for the year 1948, which is delinquent and unpaid and together with penalty and interest amounts to the sum of \$.09. The second installment amounting to the sum of \$.09 is now due and payable and unless sooner paid will be delinquent after November 20th, 1948.

Key—Zone: 9; Section: 4; Plat: 14; Parcel: 10.

Assessed Valuation: Real Property: \$5.00.

And we further certify that the legal title to said parcel of land is vested in the said Attorney General of the United States as shown by said Indexes, Subject, However, As Aforesaid, and Subject, Further, to the following condition contained in the aforesaid Vested Order date September 12th, 1947, recorded in said Registry Office in Liber 2070, Pages 61-64, to-wit: [111]

“All such property so vested to be held, used, administered, liquidated, sold or otherwise dealt with



in the interest of and for the benefit of the United States.”

And we further certify that we are duly licensed and empowered to make and prepare Certificates of Title under the provisions of Section 7501 of the Revised Laws of Hawaii, 1945.

In Witness Whereof, We have hereunto set our hand this Twenty-Seventh day of August, Nineteen Hundred Forty-Eight (1948) at 9:55 o'clock a.m.

MAKINNEY & COMPANY,  
By /s/ ALBERT K. MAKINNEY.

[Endorsed]: Filed Aug. 30, 1948.

---

[Title of District Court and Cause.]

### AFFIDAVIT OF MARK N. HUCKESTEIN

City and County of Honolulu,  
Territory of Hawaii—ss.

Mark M. Huckestein, being duly sworn upon his oath deposes and states:

1. That he is the duly appointed, qualified, and present Registrar of Conveyances for the Territory of Hawaii; that he has in his possession and under his control the books and records which are and constitute part of the Bureau of Conveyances for the Territory of Hawaii:

2. Attached to and made a part of this affidavit are certified copies of documents which are recorded in the Bureau of Conveyances for the Territory of Hawaii at the book and page indicated on the certi-

fied copies of each of the documents which are attached to and made a part of this affidavit.

/s/ MARK M. HUCKESTEIN.

Subscribed and sworn to before me this 28th day of August, 1948.

(Seal)        /s/ JOSEPH K. ARAKI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires April 25, 1952.

[Printer's Note: Exhibit No. 1 is similar to Exhibit No. 2, set out in full at page 53 of this printed Record.]

[Printer's Note: Exhibit No. 2 is similar to Exhibit No. 1 set out in full at page 51 of this printed Record.]

[Printer's Note: Exhibit No. 3 is similar to Exhibit No. 3 set out in full at page 57 of this printed Record.]

[Printer's Note: Exhibit No. 4 is similar to Exhibit No. 6 set out in full at page 64 of this printed Record.]

[Printer's Note: Exhibit No. 5 is similar to Exhibit No. 5 set out in full at page 60 of this printed Record.]

[Printer's Note: Exhibit No. 6 is similar to Exhibit "A" set out in full at page 13 of this printed Record.]

[Endorsed]: Filed Aug. 30, 1948. [115]

[Title of District Court and Cause.]

### MOTION TO STRIKE AFFIDAVITS

Comes now Shoso Nii, Plaintiff above-named, by his attorney, Shiro Kashiwa, and moves to strike the following affidavits filed in the above-entitled cause:

1. The affidavit of Albert K. Makinney filed in the above-entitled court and cause on the 30th day of August, 1948, in that while the affidavit recites that the document attached thereto is an abstract prepared by the affiant, on the face of the document it is a bare certificate of title and not an abstract of title; that there is nothing to show that the affiant is qualified as an expert; and that the matters contained in the affidavit are not within the personal knowledge of the affiant, they being conclusions of law only and he is not competent himself to testify as to said facts.

2. The affidavit of Mark N. Huckestein in that the original affidavit of Leon R. Gross which was heretofore filed in this cause and which referred to the documents attached to the affidavit of Mark N. Huckestein was withdrawn, and since there is no affidavit in lieu of the affidavit submitted by Leon R. Gross and later withdrawn, said affidavit of Mark N. [150] Huckestein being purely for the purpose of certifying that the copies of the documents attached thereto are true copies. There is no purpose in filing the documents attached because Rule 56(e) of the Federal Rules of Civil Procedure requires the filing of sworn or certified copies of papers only where the papers are referred to in an affidavit. The main affidavit was withdrawn in this cause.

Dated at Honolulu, T. H., this 3rd day of September, A. D., 1948.

SHOSO NII,  
Plaintiff,

By /s/ SHIRO KASHIWA,  
His Attorney.

NOTICE OF MOTION

Please take notice that the foregoing Motion will be presented to the Honorable J. Frank McLaughlin at the hour of 10:00 o'clock a.m. on Wednesday, the 8th day of September, 1948, or as soon thereafter as counsel may be heard, in his Courtroom in the Federal Building, Honolulu, T. H.

Dated at Honolulu, T. H., this 3rd day of September, A. D., 1948.

SHOSO NII,  
Plaintiff,

By /s/ SHIRO KASHIWA,  
His Attorney.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 3, 1948. [151]

[Title of District Court and Cause.]

REQUEST FOR ADMISSION OF GENUINE-  
NESS OF DOCUMENTS AND REQUEST  
FOR ADMISSION OF FACTS PURSUANT  
TO RULE 36 OF THE RULES OF CIVIL  
PROCEDURE

To: Shoso Nii, Plaintiff, and Shiro Kashiwa, At-  
torney for Shoso Nii, Plaintiff, 307 Hawaiian  
Trust Building, Honolulu 48, Hawaii:

You and each of you are hereby requested, pur-  
suant to Rule 36 of the Rules of Civil Procedure  
for the District Courts of the United States, as  
amended:

I.

To admit the genuineness of the following docu-  
ments, photostatic copies of which have already been  
furnished to you and which have heretofore been  
filed as exhibits to the Affidavit of Mark N. Huckle-  
stein, which Affidavit was filed in these proceedings  
on August 30, 1948, to-wit:

1. That document purporting to be a Bill of Sale,  
dated January 2, 1933, executed by Kaneichi Nii,  
running to Shoso Nii, conveying, among other things  
“that certain store in Waipahu, known as ‘K. Nii  
Shoten’, together with all of the automobiles, furni-  
tures, fixtures, goods, wares and merchandise, books  
and accounts receivable, now being in and used in  
that certain store, aforesaid”, which Bill of Sale  
was recorded in Liber 1205, Page 26, in the Office  
of the Registrar of Conveyances for the City and  
County of Honolulu, Territory of Hawaii; [152]

2. That document purporting to be a Deed, dated December 27, 1932, executed by T. Ota and Yasu Ota, his wife, of Waipahu, District of Ewa, City and County of Honolulu, Territory of Hawaii, Grantor, running to Kaneichi Nii of Waipahu, as Grantee, dated December 27, 1932, and recorded December 27, 1932, in Liber 1189, Page 81, in the Bureau of Conveyances for the City and County of Honolulu, Territory of Hawaii;

3. That document purporting to be a Deed, dated July 23, 1938, executed by T. Ota and Yasu Ota, his wife, of Waipahu, District of Ewa, City and County of Honolulu, Territory of Hawaii, as Grantor, and running to Kaneichi Nii of Waipahu, as Grantee, recorded July 23, 1938, in Book 1451, Page 418, in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii;

4. That certain Vesting Order, dated September 12, 1947, Number 9777, recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, in Liber 2070, Page 61, on September 25, 1947, executed by the Attorney General of the United States as Successor to the Alien Property Custodian, under the authority of the Trading with the Enemy Act, as Amended, in and by which the Attorney General of the United States, as aforesaid, purported to vest certain parcels of real estate as the property of Kaneichi Nii, a resident and a national of Japan;

5. That document purporting to be a Power of Attorney, dated February 7, 1939, signed by Kaneichi Nii, "formerly of Honolulu, City and County of Honolulu, Territory of Hawaii, and now residing



in the Prefecture of Hiroshima, Empire of Japan'', running to Shoso Nii of Waipahu of the City and County of Honolulu, acknowledged on February 7, 1939, before William C. Affelt, Jr., Vice Consul of the United States of America, and recorded at Liber [153] 1503, Page 190, in the Office of the Registrar of Conveyances of the City and County of Honolulu, Territory of Hawaii;

6. That certain document purporting to be a Power of Attorney, dated February 7, 1939, executed by Saku Nii, "formerly of Honolulu, City and County of Honolulu, Territory of Hawaii, and now residing in the Prefecture of Hiroshima, Empire of Japan'', running to Shoso Nii of Waipahu, City and County of Honolulu, acknowledged before William C. Affelt, Jr., Vice Consul of the United States of America, and recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, at Book 1503, Page 194.

TOM C. CLARK,  
Attorney General as Successor to the Alien Property  
Custodian, Defendant and Counter Claimant.

By RAY J. O'BRIEN,  
United States Attorney,  
EDWARD A. TOWSE,  
Assistant U. S. Attorney,  
LEON R. GROSS,  
Attorney.

By /s/ LEON R. GROSS,  
His Attorneys. [154]

To: Shoso Nii, Plaintiff, and Shiro Kashiwa, Attorney for Plaintiff:

II.

You and each of you are hereby requested, pursuant to Rule 36 of the Rules of Civil Procedure for the District Courts of the United States, as amended, to admit the truth of the following matters of fact, to-wit:

1. The facts that Kaneichi Nii, plaintiff's father, and a citizen of Japan, resided in Honolulu, Territory of Hawaii, for many years. In 1935, Kaneichi Nii returned to Japan and has resided in Japan until the present date. During his residence in Honolulu, Kaneichi Nii acquired certain property located at Waipahu, Oahu, Territory of Hawaii. The legal descriptions set forth in the documents described in paragraph I-2 and II-3 above, specifically describe this property and such property is the subject matter of this lawsuit.

2. The facts that under date of January 2, 1933, Kaneichi Nii executed a Bill of Sale in favor of his son, Shoso Nii, the plaintiff herein, for, "That certain store in Waipahu, aforesaid, known as 'K. Nii Shoten' together with all of the automobiles, furnitures, fixtures, goods, wares and merchandise, books and accounts receivable, now being in and used in that certain store aforesaid." Said Bill of Sale was recorded in Liber 1205, Page 26, of record, on May 26, 1933, in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii. This was the same Bill of Sale referred to in paragraph I-1 above.

3. The facts that under date of December 27, 1932, Kaneichi Nii purchased from T. Ota and Yasu Ota,

his wife, a parcel of real estate located in Waipahu, Oahu, described in paragraph I-2 above, (which property is the subject matter of this lawsuit) and the property was conveyed by deed dated December 27, 1932, [155] from T. Ota and Yasu Ota, his wife, to Kaneichi Nii. The deed was recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, in Liber 1189, Page 91, on December 27, 1932.

4. The facts that under date of July 23, 1938, T. Ota and Yasu Ota, his wife, conveyed by deed dated July 23, 1938, to Kaneichi Nii, plaintiff's father, a parcel of real estate located in Waipahu, Oahu, and said deed specifically describes certain real estate which is the subject matter of this lawsuit and said deed was recorded on July 23, 1938, in Liber 1451, Page 418, of the records of the Office of the Registrar of Conveyances for the City and County of Honolulu. Said deed is described in paragraph I-3 above.

5. The facts that by Vesting Order dated September 12, 1947, being Number 9777, the Attorney General of the United States as Successor to the Alien Property Custodian under the authority of the Trading with the Enemy Act, as Amended, vested the parcels of real estate referred to in paragraphs II-3 and II-4 above as property of Kaneichi Nii, a resident and a national of Japan. At the time that the Vesting Order was filed in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, record title to the said real estate was in Kaneichi Nii.

6. The facts that Shoso Nii, the plaintiff herein, and son of Kaneichi Nii, was born in Waipahu, Oahu, on January 3, 1914, and left the Hawaiian Islands

for Japan in July, 1941. Shoso Nii lived in Japan during all the intervening period from July, 1941, and returned to the Territory of Hawaii on November 8, 1947. On January 5, 1948, the plaintiff filed the instant suit under Section 9(a) of the Trading with the Enemy Act, as Amended, and alleged among other things: [156]

“That the plaintiff’s father is Kaneichi Nii; that said Kaneichi Nii is a citizen of Japan and has been continuously residing in Japan since May, 1935, to the date hereof; that prior to on or about May, 1935, said Kaneichi Nii resided for a long period of time at Waipahu aforesaid and operated a general merchandise store known as the ‘K. Nii Store’ at Waipahu, aforesaid; that due to his business ability, hard work and thrifty habits said Kaneichi Nii acquired considerable real property holdings in Waipahu aforesaid and accumulated a sizable estate for himself; that in May, 1935, said Kaneichi Nii decided to retire from active business and returned to Japan; that at the time he returned to Japan he left and gave by way of gift everything he left in the Territory of Hawaii to his only son, the plaintiff herein; and that the general merchandise store was turned over to the plaintiff by a duly executed bill of sale.”

7. The facts that in paragraph VII of the complaint filed in this lawsuit it is alleged:

“That with relation to the real property aforescribed in paragraph VI although it was orally given to the plaintiff, there was never a deed executed in favor of the plaintiff from his father.”

8. The facts that as of February 7, 1939, Kaneichi Nii and Saku Nii, his wife, father and mother respectively of Shoso Nii, the plaintiff herein, executed

before William C. Affelt, Jr., Vice Consul of the United States at Kobe, Japan, their respective powers of attorney running to Shoso Nii, the plaintiff, which powers of attorney are recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, in Liber 1503, Pages 190 to 197, inclusive.

9. The facts that in the examination of the plaintiff, conducted on July 22, 1948, pursuant to Rule 26 of the Rules of Civil Procedure for the District Courts of the United States, the plaintiff Shoso Nii testified under oath as follows:

“Q. When you were over in Japan with your father from 1941 to 1947, did you at any time tell him that you had found out the title of this real estate was not in yourself?      “A. No, sir. [157]

“Q. You did not?      “A. No.

“Q. And why didn't you?

“A. Because I didn't find any necessity in the name being changed.”

TOM C. CLARK,  
Attorney General as Successor to the Alien Property  
Custodian, Defendant and Counter Claimant.

By RAY J. O'BRIEN,  
United States Attorney,  
EDWARD A. TOWSE,  
Assistant U. S. Attorney,  
LEON R. GROSS,  
Attorney,

By /s/ LEON R. GROSS,  
His Attorneys.

[Endorsed]: Filed Sept. 9, 1948. [158]



[Title of District Court and Cause.]

### AFFIDAVIT OF T. OTA

City and County of Honolulu,  
Territory of Hawaii—ss.

T. Ota, of Waipahu, District of Ewa, City and County of Honolulu, Territory of Hawaii, being duly sworn, upon his oath deposes and says:

1. He has examined the original deed dated December 27, 1932, signed by T. Ota and Yasu Ota, his wife, and recorded in the office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, on December 27, 1932, in Liber 1189, pages 91-93, inclusive, and the said deed bears the original signature of himself and his wife, and is the deed by which this affiant conveyed to Kaneichi Nii certain real estate located at Ohua, Waikele, Ewa, Oahu, T. H., and this said deed was made, executed, and delivered by this affiant and his wife for a good and valuable consideration for the purpose of conveying to Kaneichi Nii, of Waipahu, Oahu, T. H., grantee named in said deed, certain real estate which this affiant sold to the aforesaid Kaneichi Nii in the year 1932 at or about the time that the deed was dated. [161]

2. Affiant further states that he has personally examined the original deed dated July 23, 1938, executed by this affiant and Yasu Ota, his wife, and that the deed is the same deed which this affiant and his wife made, executed, and delivered to Shoso Nii at or about the date the deed bears.



This deed has been recorded in the office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, in Liber 1451, pages 418-420, inclusive.

3. At the time that this affiant made, executed and delivered the deed described in Paragraph 2 of this affidavit, he requested Mr. Shoso Nii to state whose name should appear in said deed, and Mr. Shoso Nii stated that title to the big piece of property was in his father, Kaneichi Nii, and he desired that the deed dated July 23, 1938, be made in the name of Kaneichi Nii, and accordingly, this affiant caused said Kaneichi Nii to be named in the deed dated July 23, 1938.

/s/ T. OTA.

Subscribed and sworn to before me this 9th day of September, 1948.

(Seal)        /s/ JOSEPH K. ARAKI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires April 25, 1952.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 10, 1948. [162]

[Title of District Court and Cause.]

ADMISSION OF FACTS AND OF  
GENUINENESS OF DOCUMENTS

To: Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, Defendant, and Ray J. O'Brien, United States Attorney; Edward A. Towse, Assistant United States Attorney, and Leon R. Gross, Attorney, Attorneys for Defendant.

Comes now Shoso Nii, Plaintiff above named, and in response to the Request for Admission of Genuineness of Documents and Request for Admission of Facts, filed pursuant to Rule 36 of the Rules of Civil Procedure, by the Defendant above named, states as follows:

I. That he admits:

1. That the photostatic copies of the documents listed in Paragraphs I-1, I-2, I-3, I-4, I-5 and I-6 on Pages 1 to 3 of the Notice to Admit filed by the Defendant are true and correct copies of the original and the original of the said documents are genuine.

2. That the facts requested to be admitted in Paragraphs II-1 are true, except that portion of the said paragraph [164] which refers in substance to paragraph I-3 (mistakenly referred to in said paragraph II-1 as II-3), and that with relation to said property Plaintiff denies that it was acquired while said Kaneichi Nii resided in Honolulu in that on July 23, 1938, Kaneichi Nii was not residing in the Territory of Hawaii.

3. All of the facts requested to be admitted in paragraphs II-2, II-3, II-4, II-5, II-6, II-7, II-8 and II-9.

Dated at Honolulu, T. H., this 11th day of September, A.D. 1948.

/s/ SHOSO NII,  
Plaintiff.

Territory of Hawaii,  
City and County of Honolulu—ss.

Shoso Nii, being first duly sworn, on oath deposes and says: That he is the Plaintiff above named; that he has read the foregoing Admission of Facts and of Genuineness of Documents, knows the contents thereof and that the same are true to the best of his knowledge, information and belief.

/s/ SHOSO NII.

Subscribed and sworn to before me this 11th day of September, A.D. 1948.

(Seal) /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory  
of Hawaii.

My commission expires August 9, 1951.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 13, 1948. [165]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF SHOSO NII IN  
ANSWER OF AFFIDAVIT OF T. OTA  
FILED IN SUPPORT OF THE MOTION  
OF TOM C. CLARK FOR SUMMARY  
JUDGMENT

Territory of Hawaii,  
City and County of Honolulu—ss.

Shoso Nii, being first duly sworn, on oath deposes and says: That he has examined the affidavit of T. Ota filed in the above-entitled court and cause in support of the Motion of Tom C. Clark for summary judgment, and in answer to said affidavit states that the affiant at no time in Japanese or English told Mr. T. Ota that "title to the big piece of property was in his father, Kaneichi Nii"; that the conversation was all in Japanese and the Japanese equivalent of the word "title" was never used in the said conversation, but the affiant stated in Japanese to said T. Ota on or about July 23, 1938, that because the large piece was still under affiant's father's name, to make the deed [167] in affiant's father's name and that at a later time affiant will change it all to affiant's name because they were all affiant's;

That affiant further states that the affiant's father is Kaneichi Nii; that said Kaneichi Nii is a citizen of Japan and has been continuously residing in Japan since May, 1935, to the date hereof; that prior to May, 1935, said Kaneichi Nii resided for a long period of time at Waipahu afore-

said and operated a general merchandise store known as the "K. Nii Store" at Waipahu aforesaid; that due to affiant's father's business ability, hard work and thrifty habits said Kaneichi Nii acquired considerable real property holdings in Waipahu aforesaid and accumulated a sizeable estate for himself, both here in Hawaii as well as in Japan; that by 1935 he had enough investments in Japan to take care of himself for the rest of his life; that affiant was said Kaneichi Nii's only son; that it is a Japanese custom for a Japanese father to leave all of his properties to his eldest son; that said Kaneichi Nii left for Japan in May, 1935, and he then left everything he had in Hawaii to his son, Shoso Nii, the affiant; that at the time affiant received by way of gift from his father the larger parcel of land described in paragraph 4 of plaintiff's complaint; that there was never a deed executed in favor of the affiant from his father because at the time of leaving he left suddenly because of his daughter's illness in Japan; that subsequent to May, 1935, for more than 10 continuous years the affiant took possession of the premises and openly, exclusively, adversely, continuously and without interruption held himself to be the owner of the said parcel against the entire world; that since May, 1935, he possessed said property and collected all rentals due from the premises and kept the said rental for his own use; that since May, 1935, he paid all Territorial real property taxes on the property; that since May, 1935, he considerably improved the premises with perma-

ment [168] improvements at his own labor and large expense; that since May, 1935, he controlled said property in every respect as if he owned the property; that since May, 1935, he paid in his own name gross income taxes to the Territory of Hawaii on gross rentals from the premises; that since May, 1935, he paid in his own name net income taxes, both Territorial and Federal, on the net rental income from the premises; that in July, 1938, he purchased a small parcel of land adjacent to the large parcel so that the means of entry to the large parcel may be improved; that all of the foregoing acts were in reliance of the gift of the larger parcel in 1935; that the smaller right of way parcel purchased in July, 1938, is described in paragraph 7 of the plaintiff's complaint; that although the record title of the property remained in Kaneichi Nii, the plaintiff was, since May, 1935, the true and beneficial owner of the said parcel; that even by way of adverse possession affiant was, up to the time of taking by the Vesting Order, the owner of the said parcel.

/s/ SHOSO NII.

Subscribed and sworn to before me this 13th day of September, A.D. 1948.

[Seal] /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1951.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 14, 1948. [169]



In the United States District Court for the  
Territory of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General as Successor  
to the Alien Property Custodian,

Defendant.

TOM C. CLARK, Attorney General, as Successor  
to the Alien Property Custodian,

Counter-Plaintiff,

vs.

SHOSO NII,

Counter-Defendant.

### PETITION

Now comes Tom C. Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, Counter-Plaintiff, by Ray J. O'Brien, United States Attorney for the District of Hawaii, and respectfully represents unto this Honorable Court the following:

1. The original complaint in these proceedings was filed on January 5, 1948, and the jurisdiction of this Court was invoked under Section 9 (a) of the Trading with the Enemy Act, as Amended.

2. The answer of this counter-plaintiff was filed

on May 3, 1948, in these proceedings. Said answer alleges in Paragraphs 19, 20 and 21 for a counter-claim against the counter-defendant, Shoso Nii, the following: [171]

“That the Court has jurisdiction of this counter-claim under Section 24 (1) of the Judicial Code (28 USC Sec. 41 (1)) and Section 17 of the Trading with the Enemy Act, as amended (50 U.S.C., App., Sec. 17).

“That by virtue of Vesting Order No. 9777, dated September 12, 1947, a copy of which is incorporated in the plaintiff's Complaint as Exhibit “A” thereto, the defendant became and is the owner of:

“ ‘That certain debt or other obligation owing to Kaneichi Nii, also known as Konichi Nii, by Shoso Nii, doing business as S. Nii Store, arising out of rents collected from the property described in subparagraph 2-a hereof, and any and all rights to demand, enforce and collect the same.’ ”

3. A copy of the original Vesting Order referred to in the counter-claim is attached to and made a part of the complaint originally filed herein as Exhibit “A” and said Vesting Order is hereby incorporated herein by reference.

4. On August 30, 1948, a Turnover Directive was served upon Shoso Nii directing the said Shoso Nii to turn over to the office of Alien Property, Department of Justice, Territory of Hawaii, the sum of Three Thousand One Hundred Sixty-nine Dollars and One Cent (\$3,169.01) for property that was

vested by Vesting Order 9777. A copy of the Turnover Directive is attached hereto and made a part of this Petition as Exhibit "B."

5. The Counter-Defendant, Shoso Nii, stood and now stands in defiance of Vesting Order 9777 and the Turnover Directive hereinabove referred to. Said Shoso Nii has failed and refused to turn over to the Office of Alien Property, or to anyone duly authorized in its behalf, the sum of Three Thousand One Hundred Sixty-Nine Dollars and One Cent (\$3,169.01) vested by Vesting Order 9777 or any other sum or sums whatsoever, in violation of the provisions of the Trading with the Enemy Act, as amended.

6. The Counter-Defendant, **Shoso Nii**, has failed and refused and now persists in such failure and refusal to comply with the above-described Vesting Order and Turnover Directive [172] ordering the Counter-Defendant to deliver to the Counter-Plaintiff the sum of Three Thousand One Hundred Sixty-Nine Dollars and One Cent (\$3,169.01).

7. No previous application has been made for the relief herein requested.

8. Wherefore, Tom C. Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, Counter-Plaintiff, prays that an Order issue directing Shoso Nii to show cause, if any he have, at a time and place to be determined by this Honorable Court, why Shoso Nii

should not comply forthwith with the aforesaid Vesting Order and Turnover Directive.

/s/ RAY J. O'BRIEN,

United States Attorney, District of Hawaii.

/s/ EDWARD A. TOWSE, OB

Assistant U. S. Attorney, District of Hawaii.

/s/ LEON R. GROSS,

Attorney.

Attorneys for Tom C. Clark, Attorney General,  
United States, as Successor to the Alien Property Custodian. [173]

## EXHIBIT "B"

Office of Alien Property

Department of Justice

### TURNOVER DIRECTIVE

Re: Property of Kaneichi Nii, also known as Kenichi Nii, Vesting Order 9777 (12 F. R. 6317, September 20, 1947)

To Shozo Nii, P.O. Box 416, Waipahu, Oahu, T. H.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, Executive Order 9788 and pursuant to law, the following described property having been vested in the Attorney General of the United States by Vesting Order 9777, dated September 12, 1947 (a copy of which is attached hereto and by reference made a part hereof):

"a. Real property situated at Waikele, Waipahu, Oahu, T. H., particularly described in Ex-

hibit A, attached hereto and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances, thereto, and any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property, and

“b. That certain debt or other obligation owing to Kaneichi Nii, also known as Kenichi Nii by Shozo Nii, doing business as S. Nii Store, arising out of rents collected from the property described in subparagraph [a] hereof, and any and all rights to demand, enforce and collect the same,”;

Now, Therefore, by virtue of the authority above set forth,

It Is Hereby Found that the sum of \$3,169.01 is property that was vested by Vesting Order 9777, which is now in your possession or under your control; and

It Is Hereby Required that the property above described, i.e., the sum of \$3,169.01, shall forthwith be turned over by you to the Attorney General of the United States to be held, used, administered or otherwise dealt with in the interest of and for the benefit of the United States. [174]

Your attention is invited to Section 5(b) of the Trading with the Enemy Act, as amended, which provides that

“Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued



hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same, and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder."

Executed at Washington, D. C., on August 20, 1948.

For the Attorney General:

/s/ DAVID L. BAZELON,

Assistant Attorney General, Director, Office of  
Alien Property.

[Sealed.]

[Endorsed]: Filed Oct. 26, 1948. [175]

---

[Title of District Court and Cause.]

### AMENDED ORDER AND RULE TO SHOW CAUSE

And now on this 28th day of October, A.D. 1948, this cause having come on to be heard upon the Petition and the Exhibits annexed thereto of Tom C. Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, by his attorney, Ray J. O'Brien, United States Attorney for the District of Hawaii, good cause appearing therefor; the Court having jurisdiction of



the parties and of the subject matter, and being fully advised in the premises:

It is hereby ordered that Shoso Nii, Counter-Defendant and Respondent herein, show cause, if any he have, on Tuesday, November 9, 1948, at the hour of 1:30 p.m., or as [177] soon thereafter as counsel may be heard before the undersigned, J. Frank McLaughlin, a Judge of the United States District Court for the Territory of Hawaii, in the room usually occupied by him as a court room in the Federal Building, Honolulu, T. H., why an Order should not be made and entered by the undersigned Judge of the United States District Court for the Territory of Hawaii, directing the said Shoso Nii then and there to comply forthwith with Vesting Order 9777 issued by the Office of Alien Property, Department of Justice, and to comply further with the Turnover Directive, dated August 20, 1948, issued pursuant to Vesting Order 9777, and for such other and further relief as the Court may deem just, together with the costs and disbursements of the various proceedings herein.

It Is Further Ordered that a copy of this Order to Show Cause and a copy of the Petition pursuant to which this Order was issued be served personally upon said Shoso Nii on or before November 3, 1948, and the Return of the United States Marshal for the Territory of Hawaii, evidencing service upon said Shoso Nii as indicated, shall be deemed sufficient notice, according to law.

It Is Further Ordered that, in the event of the failure or refusal of said Shoso Nii to comply with

the terms and conditions of this Order, and to comply further with such Order or Orders as may be entered on the return day of the Rule to Show Cause entered herein, that said Shoso Nii be punished as provided by law.

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District Court for the Territory of Hawaii. [178]

[Endorsed]: Filed Oct. 28, 1948. [179]

#### UNITED STATES MARSHAL'S RETURN

The within Amended Order and Rule to Show Cause was received by me on the 28th day of October, A.D. 1948, and the same is returned duly executed as follows:

Service was made by me personally on November 2nd, 1948, upon Shoso Nii at Kanichi Nii Store, Waipahu, Oahu, T. H., at 10:40 a.m., by handing to and leaving with him a certified copy of the original Amended Order and Rule to Show Cause.

Dated at Honolulu, T. H., this 2nd day of November, A.D. 1948.

OTTO F. HEINE,  
U. S. Marshal, District of  
Hawaii.

By /s/ EMMANUEL U. MOSES, JR.,  
Deputy.

[Endorsed]: Filed Nov. 4, 1948.

[Title of District Court and Cause.]

ANSWER TO PETITION OF ATTORNEY  
GENERAL UNDER SECTION 17

Comes now Shoso Nii, Plaintiff above named, by his attorney, Shiro Kashiwa, and in answer to the petition of the Attorney General of the United States for the entry of order directing Shosi Nii to turn over forthwith the property vested under Vesting Order 9777, states as follows:

I.

"That he admits the allegations of the Attorney General contained in Paragraphs I, II, III, IV and VII.

II.

That in answer to the allegations of the Attorney General contained in Paragraphs V, VI and VIII, he refers to the answer against the counter-claim of the Attorney General filed in the above-entitled cause and hereby incorporates every allegation in the answer to the counter-claim heretofore filed in this cause; that he is not indebted in any way in any sum to the Alien Property Custodian; that prior to the issuance of the Vesting Order he was not in any way indebted to Kaneichi Nii; that he has never admitted any indebtedness to Kaneichi Nii; and [181] that he never authorized any person to admit any indebtedness to the Alien Property Custodian.

Wherefore Plaintiff prays that the petition of

the Attorney General under Section 17 of Trading with the Enemy Act be forthwith dismissed.

Dated at Honolulu, T. H., this 8th day of November, A.D. 1948.

SHOSO NII,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney.

(Acknowledgment of Service.)

[Endorsed]: Filed Nov. 8, 1948. [182]

---

[Title of District Court and Cause.]

ORAL DECISION ON THE PETITION OF  
THE ATTORNEY GENERAL OF THE  
UNITED STATES FOR THE ENTRY OF  
AN ORDER UNDER SECTION 17 OF THE  
TRADING WITH THE ENEMY ACT, AS  
AMENDED, DIRECTING SHOSO NII TO  
TURN OVER FORTHWITH THE PROP-  
ERTY VESTED UNDER VESTING ORDER  
No. 9777

“The Court: Well, I can go around and around in circles on this thing for a long time. I thought the vesting order was as you had construed it in argument, but I find on closer examination of it that I had not been reading it as carefully as I should have. I thought by virtue of the position of the commas in 2(B) that Shoso Nii was an alias for Kaneichi Nii, one and the same person. I

find now that that comma was misplaced by virtue of a typographical error. I do agree that the thing should be construed as a whole. But I cannot by so doing reach the same conclusion that you do out of 2(A). That relates to, after seizing all the real estate, a claim for rents. But this is not a claim for rent. This is with respect to a debt described specifically in 2(B), and certainly a specific description will obtain over the general. I deem it, therefore, to be squarely the type of situation that is raised by the court in this Manufacturers Trust Company case, *Tom C. Clark vs. Manufacturers Trust Company*, Second Circuit Court, which you have so kindly presented to me this afternoon, decided August 5, 1948. In other words, to repeat, the language in that decision reads as follows:

“This appeal presents several interesting questions upon which there is surprisingly little direct authority. A suit under § 17 of the Act is a summary proceeding to compel delivery of possession of enemy-owned property which has been effectively seized by a valid vesting order. The appellant concedes, as it must, that a debtor must pay to the Custodian an acknowledged debt regardless of any controversy as to who is the creditor.’ (citing cases) ‘This imposes no hardship, since the debtor is protected by § 7(e) from pursuit by any other person. But when the existence of the debt is denied, the appellant contends that requiring it to be paid before judicial determination of the dispute, in effect permits the Custodian to create the debt by his *ex parte* determination and to seize property of the



putative debtor which is not owed to the enemy or to anyone else. The consequences of giving the Custodian such a power are exceedingly drastic; the alleged debtor may have to sell property in order to obtain the money necessary to make the payment, and the loss so sustained is not remediable by a suit under § 9 for its return.'

"Then skipping a paragraph

'If the putative debtor denies the existence of any debt whatever, we should hesitate to hold that the Custodian's power extends so far as to make his ex parte determination that there is a debt and the amount of it conclusive in a proceeding under § 17. To so hold would mean that the Custodian can by his own ex parte action call property into existence for purposes of seizure. But the question in that bald form is not before us for decision.'

"I deem it to be before me for decision, and I decide that my answer to it is that the Custodian can not. I recognize that there are no square, clear-cut authorities on the point. I realize also that we are some distance now from the conflict. Perhaps it is just as well. But in most instances I am unalterably opposed to the exercises of drastic power unless there is abundant [184] clear evidence to support it, which I do not find to exist here. I think the ends of justice can be as well served by the turnover directive being settled at the end of the litigation."

Mr. Gross: What is the order of the Court?

The Court: The petition is denied.

Mr. Gross: You mean the rule is discharged?



The Court: That's right.

I will not enforce the turn-over directive.

Mr. Gross: Do you intend to enter any further order other than the decision that you have made, now?

The Court: No.

Mr. Gross: I take exception to the ruling of the court for the purpose of the record.

The Court: Very well.

Approved:

/s/ J. FRANK McLAUGHLIN,  
Judge of the United States Court for the Territory  
of Hawaii.

November 19, 1948.

[Endorsed]: Filed Nov. 19, 1948. [185]

---

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT

Comes now Shoso Nii, Plaintiff above named, by his attorney, Shiro Kashiwa, and under Rule 15 of the Rules of Civil Procedure, hereby moves that plaintiff be permitted and leave be granted by this Court to file the amended complaint which is attached hereto and made a part of this motion in the above-entitled cause on the following grounds:

1. That the amended complaint will be more in conformance with the proof to be presented in this cause;

2. That the issues and facts to be presented are matters which happened twenty or more years ago and when the evidence to be presented at the trial of this cause was carefully reviewed it appeared and it now appears that an amended complaint should be filed;

3. That the amendment if permitted will be meritorious;

4. That plaintiff has sufficient evidence to support the amended complaint;

5. That plaintiff will suffer great injustice if the amendment is not permitted;

6. That the amendment does not change the cause of action alleged in the original complaint;

7. That this motion is based on the affidavit of Shiro Kashiwa, attorney for the plaintiff, attached hereto and on the records of this cause;

8. That plaintiff is willing to permit the defendant ample time to answer the amended complaint, leaving the determination of said time to this Court.

Dated at Honolulu, T. H., this 29th day of November, A.D. 1948.

SHOSO NII,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney. [188]

## AFFIDAVIT

Territory of Hawaii,  
City and County of Honolulu—ss.

Shiro Kashiwa, being first duly sworn, on oath deposes and says:

That he is the attorney of record of the plaintiff in the above-entitled cause and court; that he has carefully weighed the evidence in the cause; that the cause is a difficult one in that principles in equity not commonly dealt with must be resorted to; that the attached complaint will be more in conformance with the proof to be presented in this cause; that material facts and evidence relating to matters which happened twenty or more years ago will be presented in the cause; that when affiant first interviewed his plaintiff all facts material to the cause were not revealed to the affiant; that upon a more thorough examination of the facts before the trial date new facts not heretofore called to the attention of the affiant were disclosed to the affiant; that affiant believes that the amendment will permit a presentation of evidence more in conformance with the facts [189] of the cause; that affiant diligently worked on the original complaint when it was first filed; that plaintiff has only an eighth grade education and it has been exceedingly difficult for the affiant to get the facts of the case out of him; that affiant believes that justice will be better carried out if the amended complaint is allowed to be filed; that the amended complaint deals and covers the same subject matter as in the

original complaint and the amended complaint does not state a new cause of action; that the cause of action is the same as that alleged in the original complaint; that affiant makes this affidavit in support of the motion attached hereto.

Dated at Honolulu, T. H., this 29th day of November, A.D. 1948.

/s/ SHIRO KASHIWA.

Subscribed and sworn to before me this 29th day of November, 1948.

[Seal] /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires: August 9, 1951.

[Endorsed]: Filed Nov. 29, 1948. [190]

---

[Title of District Court and Cause.]

### AMENDED COMPLAINT

To the Honorable the Judges of the United States  
District Court for the Territory of Hawaii:

Comes now Shoso Nii, plaintiff above named, and alleges as follows:

#### I.

That the ground upon which the jurisdiction of this Court is involved and depends is as follows:

This is an action against the Attorney General as successor to the Alien Property Custodian involving the return of a parcel of real property valued in excess of \$30,000.00 brought under the Trading with

the Enemy Act, as amended, 50 U. S. C. A. Sec. 9 (a) and also for ancillary equitable relief arising out of the same matter in conjunction therewith.

## II.

That the plaintiff, Shoso Nii, was for more than 33 years next preceding the date hereof and is a permanent resident of Waipahu, Oahu, City and County of Honolulu, Territory of Hawaii, United States of America; and that the [192] plaintiff is not an "enemy" or an "ally of enemy" as the terms are defined in the Trading with the Enemy Act.

## III.

That the plaintiff was born at Waipahu aforesaid on the 3rd day of January, 1914, and by virtue of his birth within the jurisdiction of the United States of America is a citizen of the United States; and that he has continuously since the date of his birth to the date hereof kept and maintained his status as a citizen of the United States of America.

## IV.

That the defendant, Tom C. Clark, was, at the time of the issuance of the Vesting Order herein-after mentioned, and is now the Attorney General of the United States of America, the duly appointed successor to the Alien Property Custodian acting and purporting to act pursuant to the authority vested in him by the Trading with the Enemy Act as amended and Executive Order No. 9095 as amended.

## V.

That the plaintiff's father is Kaneichi Nii; that



plaintiff was and is the only son of said Kaneichi Nii; that said Kaneichi Nii is a citizen of Japan and has been continuously residing in Japan since May, 1935, to the date hereof; that prior to on or about May, 1935, said Kaneichi Nii resided for a long period of time at Waipahu aforesaid and operated a general merchandise store known as the "K. Nii Store" at Waipahu aforesaid; that due to his business ability, hard work and thrifty habits said Kaneichi Nii acquired considerable real property holdings in Waipahu aforesaid and accumulated a sizeable estate for himself; [193] that on or about the year 1928 the plaintiff graduated from the 8th grade of the Waipahu Elementary School; that up to the said year plaintiff lived continuously with his father; that at the time of graduation plaintiff desired to go to high school and then to college; that in spite of plaintiff's expression of his desire to continue his studies said Kaneichi Nii persuaded plaintiff not to continue his studies but to become a merchant and help in aforesaid "K. Nii Store"; that in consideration of plaintiff's giving up his studies said Kaneichi Nii agreed, covenanted and promised that said Kaneichi Nii will give and transfer all of the properties, both real and personal, he owned in the Territory of Hawaii to the plaintiff in case said Kaneichi Nii left for Japan or in case said Kaneichi Nii died all of said Kaneichi Nii's properties will be the plaintiff's; that plaintiff relying on said Kaneichi Nii's aforementioned promise, covenant and agreement did not continue on to high school but discontinued, quit and dropped his schooling com-



pletely and in July, 1928, began helping said Kaneichi Nii at the said "K. Nii Store"; that plaintiff received no compensation whatsoever by way of wages or salary; that he worked and helped from 6:00 a.m. each morning to 11:00 p.m. each night helping at the said "K. Nii Store," every day including Sundays, continuously between said July, 1928, to January 2nd, 1933; that on January 2nd, 1933, said Kaneichi Nii by a properly executed written instrument, a bill of sale, transferred the said "K. Nii Store" to the plaintiff; that on or about said January 2nd, 1933, said Kaneichi Nii had already made plans to retire from his business and return to Japan; that on or about December 17, 1932, in accordance with the agreement, [194] promise and covenant aforementioned made, executed and delivered to the plaintiff a will in accordance with the laws of the Territory of Hawaii, giving, devising and bequeathing all of his personal and real properties of which said Kaneichi Nii may die seized or possessed unto the plaintiff absolutely; that by said 1933 said Kaneichi Nii had amassed in Japan a considerable estate in real property holdings as well as savings and could have lived for the rest of his life without any further labor;

## VI.

That during the early part of the year 1932 said Kaneichi Nii out of the funds of the "K. Nii Store" purchased two parcels of improved and unimproved real property in Waipahu aforementioned by way of agreements of sale; that the following improved property was one of the parcels:

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, being Lot "4," and thus bounded and described:

Parcel No. 1

Beginning at the Southeast corner of this piece of land on the West bank of the Kapakahi Stream, being also the Northeast end of present wooden bridge, the true azimuth and distance of the said point to a pipe driving at the Northwest corner of Lot 10. Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true South:

1.  $105^{\circ} 50'$  170.00 feet along the North side of right of way;
2.  $15^{\circ} 50'$  14.80 feet along the West end of right of way;
3.  $105^{\circ} 50'$  105.80 feet along the remaining portion of R.P. 5694 L. C. Aw. 6545 Apana 1 to Haalilio, to a pipe;
4.  $199^{\circ} 50'$  140.10 feet along the same, to a pipe;
5.  $294^{\circ} 16'$  218.60 feet along the South bank of the Kapakahi Stream;
6.  $311^{\circ} 48'$  25.54 feet along the West bank of the Kapakahi Stream;
7.  $348^{\circ} 10'$  61.30 feet along the West bank of the Kapakahi Stream;

8.  $19^{\circ} 14' 27.50$  feet along the West bank of the Kapakahi Stream, to the point of beginning.

Containing an Area of 29,200 square feet, or 0.670 Acre, or thereabouts.

Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the owners and occupants of the above-mentioned lot and the remaining portion of L. C. Aw. 6545 Apana 1 to H. Haalilio being a road purpose only, which right of way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of Kapakahi Stream, the true azimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06' 17.46$  feet along the West bank of the Kapakahi Stream;
2.  $105^{\circ} 50' 41.04$  feet;
3.  $195^{\circ} 50' 14.80$  feet;
4.  $285^{\circ} 50' 30.00$  feet to the point of beginning and containing an area of 526 square feet.

that the real property aforescribed is situated at Waipahu aforesaid within the jurisdiction of this court and there are three valuable buildings on the said property; that after January 2nd, 1933, aforesaid said Kaneichi Nii gave to the plaintiff any and all rentals derived from the premises aforescribed and plaintiff kept up with all expenses, the making of all improvements, payment of taxes and maintained the property; that after said date, said

Kaneichi Nii left the entire control and management of the said property to the plaintiff; that said Kaneichi Nii intended to have a deed properly executed to the plaintiff but in May, 1935, had [196] to hurriedly leave for Japan due to a severe illness of plaintiff's sister who was then in Japan; that at the time of Kaneichi Nii's leaving he left by way of gift everything he had whether by way of personal property or real property in the Territory of Hawaii to the plaintiff; that the foregoing gift was in full execution of the agreement, promise and covenant made by said Kaneichi Nii to the plaintiff in the year 1928 as aforescribed; that in further consideration of said gift plaintiff promised his father that he will look after and support plaintiff's minor sister who then resided with plaintiff as long as it was necessary that she be looked after and supported; that plaintiff looked after and supported said sister for many years thereafter;

## VII.

That with relation to the real property aforescribed in paragraph VI although it was orally given to the plaintiff, there was never a deed executed in favor of the plaintiff from his father; that subsequent to May, 1935, for more than ten (10) continuous years the plaintiff took possession of the premises and openly, exclusively, adversely, continuously and without interruption held himself to be the owner of the premises aforescribed against the entire world; that since May, 1935, he possessed said property and collected all rentals due from the premises and kept the said rentals for his own use;

that since May, 1935, he paid all Territorial real property taxes on the premises; that since May, 1935, he considerably improved the premises with permanent improvements at his own labor and expense; that since May, 1935, he controlled the property in every respect as if he owned the property; that since May, 1935, he paid [197] gross income taxes to the Territory of Hawaii in his own name on the gross rentals from the premises; that since May, 1935, he paid in his own name net income taxes, both Territorial and Federal, on the rental income from the premises; that on July 23, 1938, he purchased from one T. Ota for the sum of \$175.00 by way of a deed duly executed by T. Ota, parcel 2 described in the Vesting Order, the exact description of which is as follows:

All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, and thus bounded and described:

Parcel No. 2

Beginning at the Northeast corner of this piece of land the true azimuth and distance of the said point of beginning from a pipe driven at the Northwest corner of the Lot 10, Land Court Application 779, by traverse, being: (a) 159° 06' 28.75 feet and (b) 105° 50' 30.0 feet and running by azimuths measured clockwise from true South:



1. 15° 50' 14.8 feet;
2. 105° 50' 140.0 feet;
3. 195° 50' 14.8 feet;
4. 285° 50' 140.0 feet to the point of beginning.

Containing an area of 2.072 square feet, or thereabouts.

that it was put in the name of Kaneichi Nii because the adjoining parcel 1 was in the name of Kaneichi Nii and since parcel 1 was by way of gift already his, the plaintiff thought that no harm would be done in naming as grantee said Kaneichi Nii; that the foregoing acts were all in reliance of the gift of the said real property to him in May, 1935; and that Kaneichi Nii held said Parcel 2 in trust for plaintiff.

### VIII.

That there were other real properties in Waipahu [198] left by gift to the plaintiff by his father in May, 1935, which were also parol gifts unsupported by deeds, but plaintiff in 1939 using powers of attorney from Kaneichi Nii and Saku Nii, wife of said Kaneichi Nii, sold said parcels and collected all proceeds from the sale of the said property for his own use and purpose.

### IX.

That at the time of the gift in May, 1935, to the plaintiff, the property aforescribed in paragraph VI being situated in a remote part of Waipahu was not of much value; that plaintiff could have sold said properties described in paragraphs VI and VII as in the case of the property described in para-



graph VIII and invested said funds to his own use but instead kept the properties; that on or about 1940 four-laned paved highways have been constructed near the said properties and the value of the properties now is about ten times that of May, 1935; that its present value is about \$30,000.00 more or less; that if the properties described are not returned as prayed for in this cause to the plaintiff, the plaintiff will suffer great and irreparable damages; that plaintiff sacrificed his desire to be further educated and is now considered an uneducated person; that he deprived himself relying on the promise, agreement and covenant aforementioned the liberties and full enjoyment of life during his younger days; that plaintiff is and was since May, 1935, the beneficial and equitable owner of all of the two premises described; and that he is also entitled to the premises on grounds of adverse possession.

#### X.

That heretofore, to wit, on September 12, 1947, [199] the defendant in his capacity as successor to the Alien Property Custodian of the United States of America issued Vesting Order No. 9777, an exact copy of which Order is attached hereto and marked Exhibit "A" and hereby incorporated herein as if recited herein.

#### XI.

That by virtue of said Order the said properties are now vested in the defendant, Attorney General of the United States of America in his capacity as successor to the Alien Property Custodian, and the plaintiff has been illegally deprived of his proper-

ties by said Vesting Order; that since the issuance of the said Order the defendant through his agents have been illegally, unlawfully and contrary to law and the Constitution of the United States of America in complete control and possession of the premises collecting all rentals therefrom and will continue to do so, and plaintiff is informed and believes that defendant will sell said properties if the relief requested herein is not granted; and that such a sale would be illegal and contrary to the laws and the Constitution of the United States of America.

## XII.

That the aforesaid wrongful and illegal possession, supervision and control of the properties have caused and will cause plaintiff irreparable damages.

## XIII.

That the threatened sale of said real properties, if carried out, will cause irreparable damages to the plaintiff. [200]

## XIV.

That prior to the filing of this suit the plaintiff duly made and filed with the Office of the Alien Property Custodian at Washington, District of Columbia, notice of his claim to said real properties under oath on Form APC 1-A and in such form and in such particulars required by said Alien Property Custodian, in conformity with and in pursuance to the statutes, requirements, and orders in such cases made and provided; that no hearing has been granted in connection with such claim and plaintiff has been informed that no hearing will be granted

immediately upon the filing of such claim; that he has been informed that the office of the Alien Property Custodian has not acted on claims filed years ago and there is no reason to believe that plaintiff's claim will be acted upon immediately.

### XV.

That in addition to the vesting of the properties aforescribed the defendant in his capacity as successor to the Alien Property Custodian, through his agents, has illegally and unlawfully made written demands on the plaintiff to pay:

“That certain debt or other obligation owing to Kaneichi Nii, also known as Konichi Nii by Shozo Nii, doing business as S. Nii Store, arising out of rents collected from the property described in sub-paragraph 2-a hereof, and any and all rights to demand, enforce and collect the same.”

that plaintiff claims that since he was and is the beneficial and equitable owner of the premises as alleged in paragraphs V, VI, VII, IX, XI, XII and XIII, he did not and does not owe the debt above referred to in the Vesting Order to Kaneichi Nii or his successor the defendant; that in spite of such claims of the plaintiff the defendant through his agents [201] have insisted on the payment of the alleged debt; that the amount of the alleged debt claimed by the defendant through his agent is approximately \$3,500.00 to \$4,000.00; that if the defendant unlawfully, forcibly and summarily collects said alleged debt, the plaintiff will be required to

liquidate his store business in that he does not have sufficient cash to pay such a large sum of money; that if the relief as prayed for with relation to the matters alleged in this paragraph is not granted, the plaintiff will be permanently and irreparably damaged.

#### XVI.

That the plaintiff claims that the matter of the return of properties herein alleged and the matter of the existence or non-existence of the debt alleged in paragraph XV is so closely related that it should be settled in this single cause.

#### XVII.

That plaintiff has no adequate and speedy remedy at law.

Wherefore, plaintiff prays that a summons be issued out of this Court, directed to said Tom C. Clark, Attorney General as successor to the Alien Property Custodian, commanding him on a day certain, to appear and answer this bill of complaint as is by law provided, answer under oath being waived, and obey and perform such orders and decrees in the premises as to the Court may seem proper and required by the principles of equity and good conscience; and

The plaintiff prays that a decree be entered herein restraining the sale of the real properties described in [202] paragraphs VI and VII above by the defendant as well as his agents, employees and representatives pending determination of this action; that it be adjudged that the right and title in said real properties are in the plaintiff and that said plain-

tiff is entitled to the immediate possession thereof; and that an appropriate order be entered directing defendant to transfer and deliver to the plaintiff said real properties and to render a full, true and correct accounting of moneys received and collected from September 12, 1947, to the date of the transfer.

And as further relief the plaintiff prays that a decree be entered herein permanently enjoining the defendant from collecting the alleged debt alleged in paragraph XV above; that an order be entered declaring that the entire Vesting Order No. 9777 to be a nullity and of no effect.

The plaintiff prays for such other, further and different relief as to this Court may seem equitable, just and proper.

Dated at Honolulu, T. H., this 29th day of November, A. D. 1948.

/s/ SHOSO NII.

His Attorney:

/s/ SHIRO KASHIWA. [203]

Territory of Hawaii,  
City and County of Honolulu—ss.

Shoso Nii, being first duly sworn, on oath, deposes and says: That he is the Plaintiff named in the foregoing Amended Complaint; that he has read the same, knows the contents thereof and that the same are true.

/s/ SHOSO NII.



Subscribed and sworn to before me this 29th day of November, A.D. 1948.

(Seal)        /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires: August 9, 1951. [204]

Office of Alien Property  
Department of Justice  
Vesting Order 9777

Re: Real property and a claim owned by Kaneichi  
Nii, also known as Konichi Nii.

[Printer's Note: Vesting Order 9777 is set  
out in full as Exhibit "A" attached to Com-  
plaint, page 13, of this printed Record.]

---

[Title of District Court and Cause.]

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Shiro Kashiwa, plaintiff's attorney, whose address is 307-308 Hawaiian Trust Building, Honolulu 48, T. H., an answer to the complaint which is herewith served upon you, within 10 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default



will be taken against you for the relief demanded in the complaint.

.....  
Clerk of Court.

By .....  
Deputy Clerk.

Date: .....[209]

[Title of District Court and Cause.]

### MOTION TO REOPEN CASE TO TAKE ADDITIONAL TESTIMONY

Comes now Shoso Nii, Plaintiff above named, by his attorney, Shiro Kashiwa, and hereby moves that the trial of this cause be reopened so that further depositions of Kaneichi Nii may be taken in this cause and adduced as evidence in this cause.

As grounds for this motion Plaintiff alleges that there was a misinterpretation of a material answer from Japanese to English and from English to Japanese in that immediately after the deposition was taken Plaintiff was informed in a letter by Kaneichi Nii, the deponent, as follows:

"I was notified on the 5th day of October by the Consul in Kobe to appear at the Consulate by the 14th day of October. Pursuant to the notice, I appeared at the Consulate with Takako at 9 a.m. on the 14th of October and stated positively in detail that everything was left under your charge and that they were all definitely your properties. I believe, therefore, you will be duly notified by the Consul.

Consequently, I presume your ownership to all the properties will now be clearly established. Inasmuch as such should be the case, I feel my apprising you of the state of matters here so that you may not be the least bit discouraged will give you complete confidence." [211]

As further ground Plaintiff alleges that the answer to the following question to the deposition:

"Q. What did you do with all of your real properties in Hawaii when you last left Hawaii for Japan?"

was not responsive to the question and the unresponsive answer has unduly prejudiced the Plaintiff; that this cause may be only justifiably disposed of by receiving a direct answer to the question asked; that substantial justice in the cause cannot be had unless the said question is directly answered; that a direct answer to the question is material in this cause.

This motion is based on the affidavit attached hereto and upon the record and evidence already adduced in this cause.

Dated at Honolulu, T. H., this 9th day of December, A. D. 1948.

SHOSO NII,  
Plaintiff,

By /s/ SHIRO KASHIWA,  
His Attorney.

## NOTICE OF MOTION

Please take notice that the foregoing Motion will be presented to the Honorable J. Frank McLaughlin at the hour of 2:30 o'clock p.m., on Monday, the 13th day of December, 1948, or as soon thereafter as counsel may be heard, in his Courtroom in the Federal Building, Honolulu, T. H.

Dated at Honolulu, T. H., this 9th day of October, 1948.

SHOSO NII,  
Plaintiff,

By /s/ SHIRO KASHIWA,  
His Attorney. [212]

## AFFIDAVIT

Territory of Hawaii,  
City and County of Honolulu—ss.

Shoso Nii, being first duly sworn, on oath deposes and says: That he is the plaintiff in this cause; that by a letter from Kaneichi Nii dated October 15, 1948, plaintiff was informed as follows:

“I was notified on the 5th day of October by the Consul in Kobe to appeal at the Consulate by the 14th day of October. Pursuant to the notice, I appeared at the Consulate with Takako at 9 a.m. on the 14th of October and stated positively in detail that everything was left under your charge and that they were all definitely your properties. I believe, therefore, you will be duly notified by the Consul. Conse-

quently, I presume your ownership to all the properties will now be clearly established. Inasmuch as such should be the case, I feel my apprising you of the state of matters here so that you may not be the least bit discouraged will give you complete confidence.”

that said letter was in Kaneichi Nii's writing and plaintiff can positively identify said letter as said Kaneichi Nii's letter; that the letter is not consistent with the answers in the deposition; that said letter is in the possession of the plaintiff; that [213] plaintiff did not show the letter to plaintiff's attorney till about 3 or 4 days after the end of the case because he did not think that the said letter could be used in any way as evidence in the cause; that plaintiff makes this affidavit in support of the motion attached hereto;

And further affiant sayeth not.

/s/ SHOSO NII.

Subscribed and sworn to before me this 9th day of December, A. D. 1948.

(Seal)        /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1951.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 9, 1948. [214]

[Title of District Court and Cause.]

MEMORANDUM OF TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, IN OPPOSITION TO MOTION TO REOPEN CASE TO TAKE ADDITIONAL TESTIMONY, FILED BY SHOSO NII.

Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, Defendant and Counter-Plaintiff, files this memorandum in opposition to the "Motion to Reopen Case to Take Additional Testimony," filed herein by the Plaintiff and Counter-Deefndant, Shoso Nii, on December 9, 1948, and for grounds of opposition respectfully directs the Honorable Court's attention, among other things, to the following:

(1) The Complaint in this case was filed on January 5, 1948. The trial of the issues commenced on November 29, 1948, and continued to and including December 1, 1948. At the conclusion of the Plaintiff's case, this Honorable Court was very specific in inquiring of Plaintiff's counsel [215] whether Plaintiff's counsel had additional evidence which he desired to introduce, and Plaintiff's counsel positively stated that he had no such evidence. The court decided the issues in this case on December 1, 1948, after a painstaking, thorough, complete, fair, and impartial trial. A transcript of the court's oral opinion is as follows:



“I do not feel in this matter that I need the assistance of legal briefs for two reasons: one, the plaintiff here has the burden of convincing the court by preponderance of credible evidence that the allegations of the complaint are **true and correct**. Ingenious as is the legal theory upon which the plaintiff bases his case, the proof that has been adduced by the plaintiff does not bring conviction to my mind that in fact a gift of this real property was made to him by his father. Secondly, assuming that an equitable gift of the property was made by the father to the son in 1935, the acts and actions of the father subsequent to that date do not support the plaintiff’s contentions. Indeed, the father testifying in this case does not in the slightest degree corroborate the plaintiff’s contentions here made. Over and beyond that, the acts of the father and of the plaintiff himself during the years 1935 to 1947, at which time the custodian vested the property, are contradictions of the theory here advanced.

“I am satisfied that the father was an intelligent person, though he may have been uneducated, and did well in his business at Waipahu and, as has been pointed out, he knew what to do when he wanted to effectively dispose of property, for prior to going to Japan in 1933 he properly and duly executed a bill of sale for the store in favor of his son. And I am certain that preparing to go to Japan permanently, if he had promised his son, as the son contends, that prior to leaving he certainly would have taken steps to execute the



proper deed of the real property in Hawaii to his son, he certainly knew how to execute a will to take care of the disposition of his property after death.

“Further, in 1939, though he here now claims the property was equitably his since 1935—The son conferring first apparently with someone here in Honolulu who purported to advise him legally—the son asked the father not for a deed to the property which he claimed was given to him but rather for a power of attorney from the father and the mother to deal with the parents’ property here in Hawaii.

“All of those facts and factors which I have outlined lead me to the conclusion that the plaintiff has not substantiated by credible proof the allegations of the complaint. And further, assuming that he had, I am still satisfied, as indicated in my *Fujino* decision, that the Alien Property Custodian with respect to real property stands in the position of a purchaser for value and is protected by the recording statutes of the Territory. Those being my conclusions and findings, the court will approve findings of fact and conclusions of law consistent with this [216] outline of my opinion and will sign them upon presentation, and will include an order previously held up directing the plaintiff to turn over to the custodian the rents that have come into the plaintiff’s possession since the time when the plaintiff collected the rents from his father’s property; in other words, the turn-over directive that heretofore has been denied will

at this time be granted, and I will sign an order to that effect on presentation."

(2) The "Motion to Reopen Case" fails to state any legal authority for the presentation of such motion.

(3) This "Motion to Reopen Case" is a thinly disguised effort to impeach the testimony of the Plaintiff's father, Kaneichi Nii, who was originally sworn to testify and did testify in these proceedings on behalf of the Plaintiff. Plaintiff's counsel endeavored to impeach the testimony of Kaneichi Nii, his own witness, during the trial of this case, and this Honorable Court ruled that Plaintiff's counsel had no authority to impeach the testimony of his own witness.

(4) If, as alleged, the purpose for reopening the case is to take additional testimony, it is obvious from the motion itself that such additional testimony would be that of witnesses for the Plaintiff, who were given full and ample opportunity to testify at the time of the trial.

(5) Nowhere in the "Motion to Reopen Case to Take Additional Testimony" does it appear that the Plaintiff has, in such form that it would be legally admissible, any competent, relevant, or material additional evidence to introduce into this case. The alleged letter from Kaneichi Nii to Shoso Nii was allegedly written one day after Kaneichi Nii answered the interrogatories propounded to him by Plaintiff's counsel. Kaneichi Nii's answers to these interrogatories have been on file with the Clerk of this court since October

26, 1948. There is nothing in the "Motion to Reopen Case" which presents an adequate and sufficient legal excuse for Plaintiff's failure to present the contents of the alleged letter from Plaintiff's father at the time of the trial of the issues before this Honorable Court.

(6) The Motion to Reopen does not set forth the original letter, allegedly received the Plaintiff's father, nor the envelope in which it [217] was mailed, nor does Plaintiff offer any evidence which is admissible under the recognized rules of evidence. Plaintiff merely offers his own self-serving statement based upon an alleged translation of an alleged letter. Plaintiff purports thereby to contradict the sworn testimony of his own father, his own witness, who was permitted to testify freely as a witness for his own son and who could not possibly have been confused by cross-interrogatories by the Defendant or Defendant's counsel, because none were presented.

Respectfully submitted,

TOM C. CLARK,

Attorney General, as Successor to the Alien Property Custodian.

By /s/ RAY J. O'BRIEN,

United States Attorney.

By /s/ HOWARD K. HODDICK,

Assistant United States Attorney.

By /s/ LEON R. GROSS,

Attorney.

[Endorsed]: Filed Dec. 13, 1948. [218]

[Title of District Court and Cause.]

## MOTION FOR FINDINGS OF FACTS

Comes now Shoso Nii, Plaintiff above named, by his attorney, Shiro Kashiwa, and hereby moves that the following findings of facts as required under Rule 52 (a) of the Rules of Civil Procedure in the District Court of the United States be made by this Court:

### FINDINGS OF FACTS

1. This Court has jurisdiction of the parties and of the subject matter;

2. This action is brought under Section 9 (a) of the Trading With the Enemy Act, as amended (50 U.S.C.A. Section 9 (a)) and for other relief; that proper claims for the return of the properties involved in this cause were filed with the Alien Property Custodian prior to the bringing of this suit;

3. This proceeding involves two parcels of real estate, one improved with three rental units and the other unimproved, used for right of way purposes to the improved lot, located at Waipahu, Island of Oahu, Territory of Hawaii, United [220] States of America, which were vested by the Attorney General of the United States, as successor to the Alien Property Custodian, under authority of the Trading With the Enemy Act, as amended (U.S.C.A. Title 50), by Vesting Order No. 9777, dated September 12, 1947, signed by the Attorney

General of the United States, as successor to the Alien Property Custodian;

4. Kaneichi Nii, Plaintiff's father, was born in Japan and came to live in the Hawaiian Islands more than thirty years ago. With the exception of certain trips which he made to Japan, Kaneichi Nii continued to reside in the Territory of Hawaii until 1935, at which time Kaneichi Nii permanently returned to Japan and said Kaneichi Nii has remained in Japan as a citizen and resident of Japan since 1935 to and including the present time. At the time of the vesting of the real estate and at the present time, Kaneichi Nii was and is a citizen and a resident of Japan; that when Kaneichi Nii returned to Japan in 1935 he had sufficient properties and investments in Japan to take care of him for the rest of his life;

5. During the time that Kaneichi Nii lived in the Territory of Hawaii, he acquired various properties, and the two parcels of real estate which is the subject matter of this case is part of those properties. That up to January 3, 1933, Kaneichi Nii's property also included a general merchandise store located at Waipahu, Oahu, T. H., known as "K. Nii Shoten"; that the said "K. Nii Shoten" was not and is not situated on the parcels in question;

6. The real estate which is the subject matter of this lawsuit was acquired by Kaneichi Nii for the total consideration of \$2,250.00 from T. Ota and Yasu Ota, his wife, by deed to Kaneichi Nii dated December 27, 1932, recorded December [221] 27,



1932, in the Office of the Registrar of Conveyances for the City and County of Honolulu, T. H., at Liber 1189, pages 91-93, inclusive; and by deed from T. Ota and Yasu Ota, his wife, for the total consideration of \$175.00 to Kaneichi Nii, dated July 23, 1938, and recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, T. H., on July 23, 1938, at Liber 1451, pages 418-420, inclusive. True and correct copies of these deeds have been introduced in evidence and are a part of the record herein. The legal description of the real estate is correctly set forth in Vesting Order 9777;

7. Record title at the Bureau of Conveyances, Honolulu, Territory of Hawaii, to the two parcels of real estate conveyed by the above-mentioned deeds remained in Kaneichi Nii from the respective dates of their acquisition from T. Ota and Yasu Ota, his wife, down to and including the date that they were vested by the Attorney General of the United States. The title to both properties were not Land Court Titles (Torrens System) but were recorded under the regular system of "non-Land Court Titles";

8. That the Territory of Hawaii levied and assessed real estate taxes against these parcels in the name of Kaneichi Nii and such taxes were paid annually by Shoso Nii after Kaneichi Nii departed for Japan in 1935 to the date of the Vesting Order;

9. That from the time Kaneichi Nii left for Japan in 1935 up to the effective date of the Vest-



ing Order, Shoso Nii collected as his own all rentals from the property in dispute; that Shoso Nii paid to the Territory of Hawaii in Shoso Nii's name gross income taxes on the gross rental derived from the premises; that Shoso Nii paid to the Territory of Hawaii in Shoso Nii's name net income taxes due to the Territory of Hawaii for the rental collected; that Shoso Nii paid to the United States of America through the Bureau of Internal Revenue net income taxes in the name of Shoso Nii on the rentals collected; that Shoso Nii paid for all expenses of upkeep of the property; that between June, 1941, to the date of the Vesting Order above mentioned Shoso Nii acted under and through his attorney-in-fact, Katsutoshi Mikami, who held a duly executed and recorded power of attorney signed by Shoso Nii which is in evidence in this cause;

10. That Shoso Nii, the Plaintiff herein, was born on January 3, 1914, in the Territory of Hawaii, and by virtue of his birth within the United States is a citizen of the United States of America, and is the only son of Kaneichi Nii. Kaneichi Nii and his wife, Saku Nii, had three daughters, one of whom died. The other two daughters now live with their parents in Japan. Shoso Nii made two trips to Japan, one in 1920 while yet a minor, and he was then there for about a year, and again in June, 1941, to visit his ill father, that during his said visit in 1941 he was unable to return to Hawaii because of the intervening war; that he returned to Hawaii on November 8, 1947; that during

said period June, 1941, to November 8, 1947, he was a resident of the Territory of Hawaii; that at the time of filing of this suit Shoso Nii was a resident of the Territory of Hawaii;

11. That Plaintiff Shoso Nii on or about 1928 graduated from the eighth grade of Waipahu Elementary School and made application for registration at the Kalahaua Junior High School in Honolulu; that he was accepted for enrollment by the said Kalakaua Junior High School; that he did not continue his studies there but instead helped Kaneichi Nii, his father, at said Kaneichi Nii's store; that said Kaneichi Nii at said time and repeatedly thereafter promised Shoso Nii all of said Kaneichi Nii's property in [223] Hawaii at the time of said Kaneichi Nii's death or if said Kaneichi Nii left for Japan if Shoso Nii left school and helped at the said store; that the fact that there was such an agreement is corroborated by the testimony of Mr. Ikinaga and by the evidence of written entries made in the books of the Waipahu Garage, Ltd., a corporation in which Kaneichi Nii was a record stockholder up to 1939, showing that in spite of the fact that Kaneichi Nii remained the record stockholder, Shoso Nii received dividends in the name of Shoso Nii up to the time of the change of the stock record; that said Shoso Nii relied on said promise and gave up going to school and without any wages put in long hours of work every day including Sundays helping at the Kaneichi Nii's store up to January 2, 1933;

12. As of January 2, 1933, Kaneichi Nii, the

father, desired to partially and prematurely execute the aforementioned promise and made a gift of the father's store located at Waipahu to Shoso Nii. Kaneichi Nii made, executed and delivered a Bill of Sale which was duly recorded, and effectively made a gift of said store to said son. Bank accounts in the name of the father at the Waipahu Branch of the Bank of Hawaii were also transferred to the son when the Bill of Sale was made. A true and correct copy of the said Bill of Sale is in evidence. Said Bill of Sale is recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu at Liber 1205, page 26;

13. That on the 17th day of December, 1932, said Kaneichi Nii made a will in accordance with the promise aforementioned in paragraph 11 bequeathing all of his properties, both real and personal, to the plaintiff;

14. That plaintiff in reliance on the promise aforementioned in paragraph 11 built two (2) two-bedroom houses on [224] the premises in dispute and a substantial stone wall to keep the water of the Waipahu river from flooding the premises at the total expense to him of about \$3,000.00;

15. In 1938 the plaintiff negotiated for the purchase of the second and smaller parcel of real estate which is part of the property involved in this proceeding and serves as a right of way to the larger parcel in dispute. The plaintiff was able to direct the form and in whose name this deed was to be executed. The plaintiff caused title to the second parcel of real estate to be taken in the name of his

father, Kaneichi Nii, because the right of way was to be appurtenant to the main parcel. Plaintiff at that time knew that title to the larger parcel of real estate also was in the name of his father, Kaneichi Nii; that the entire consideration for the small parcel was paid by Shoso Nii;

16. In 1939 Shoso Nii caused two powers of attorney to be drafted by an accountant without legal advice and forwarded them to Japan, where the said powers of attorney were duly executed by Kaneichi Nii and Saku Nii (mother of the plaintiff), and said powers of attorney were acknowledged before a Vice Consul of the United States of America at Kobe, Japan, on February 7, 1939, and returned to the Territory of Hawaii and duly recorded in the Office of the Registrar of Conveyances. True and correct copies of said powers of attorney have been introduced into evidence as part of the record in this cause;

17. That subsequent to May, 1935, up to the date of the Vesting Order, plaintiff had possession of the premises in dispute; his tenants lived on the premises in dispute;

18. That for more than ten (10) years continuously and without interruption plaintiff had the open, exclusive, adverse and continuous possession of the premises in dispute; [225]

19. That in 1935 just before Kaneichi Nii's departure to Japan said Kaneichi Nii orally told Shoso Nii he did give all of his properties to the plaintiff; that said gift was in accordance with the promise aforementioned in paragraph 11;

20. That plaintiff's father had to leave for Japan in 1935 sooner than he had expected rather suddenly because of the sudden aggravation of the illness of his daughter, who was then ill in Japan; that that fact that she was ill is well established by the testimony of her husband, Jinichi Tsumoto;

21. That because Kaneichi Nii had to depart suddenly for Japan in 1935, no deed of any nature whatsoever was executed by Kaneichi Nii; that there was another parcel of property in Waipahu which remained in the name of Kaneichi Nii close to the property in dispute; that in 1940 Shoso Nii sold this property to Attorney Oliver Kinney and kept for himself the consideration paid by said Attorney Oliver Kinney.

This motion is based on the records of this cause, upon the admissions by the defendant on the pleadings of this cause and upon the evidence that was adduced in this cause.

Dated at Honolulu, T. H., this 15th day of December, A.D. 1948.

SHOSO NII,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney.

[Endorsed]: Filed Dec. 15, 1948. [226]



[Title of District Court and Cause.]

## FINDINGS OF FACT BY THE COURT AFTER A TRIAL OF THE ISSUES

This cause having come on for a trial of the issues upon the Complaint filed herein by the Plaintiff and the Answer thereto filed by the Defendant, and upon the Counterclaim filed herein by the Defendant and Counter Plaintiff and the Answer to said Counterclaim filed herein by the Plaintiff and Counter Defendant; the issues in this cause having been submitted to the Court upon the testimony and evidence and exhibits of the respective parties introduced at the trial held on November 29, 1948, November 30, 1948, and December 1, 1948, and the Court having heard the arguments of counsel and being fully advised in the premises; doth find: [227]

1. This Court has jurisdiction of the parties and of the subject matter;

2. This action is brought under Section 9(a) of the Trading with the Enemy Act, as Amended (50 U.S.C.A. Section 9(a) ) and for other relief;

3. These proceedings involve two adjacent parcels of real estate, one unimproved (which shall be called "the small parcel"), the other improved (which shall be called "the large parcel"), located in Waipahu, Island of Oahu, Territory of Hawaii, which were vested by the Attorney General of the United States, as successor to the Alien Property Custodian, under authority of the Trading with the Enemy Act, as Amended (U.S.C.A. Title 50), by Vesting Order No. 9777, dated September 12, 1947, signed by the Attor-



ney General of the United States, as successor to the Alien Property Custodian;

4. The real estate was vested as “property within the United States owned or controlled by Kaneichi Nii, a resident and a national of a designated enemy country (Japan)”;

5. Kaneichi Nii, plaintiff’s father, was born in Japan and came to live in the Hawaiian Islands more than thirty years ago. With the exception of certain trips which he made to Japan, Kaneichi Nii continued to live in the Territory of Hawaii until 1935, at which time Kaneichi Nii returned to Japan and said Kaneichi Nii has remained in Japan as a citizen and resident of Japan since 1935 to and including the present time. At the time of the vesting of the real estate and at the present time, Kaneichi Nii was and is a citizen and a resident of Japan. When Kaneichi Nii returned to Japan in 1935, he had property in Japan;

6. During the time that Kaneichi Nii lived in the Territory of Hawaii, he acquired various property, and the real estate which is the subject matter of this lawsuit is part of that property. [228] Kaneichi Nii’s property also included a general merchandise store located at Waipahu, Oahu, T. H., known as “K. Nii Shoten”;

7. The large parcel of real estate which is the subject matter of this lawsuit was acquired by Kaneichi Nii for a recited consideration of \$2,250.00 from T. Ota and Yasu Ota, his wife, by deed to Kaneichi Nii dated December 27, 1932, recorded December 27, 1932, in the Office of the Registrar of Conveyances for the City and County of Honolulu, T. H., at Liber

1189, pages 91-93, inclusive. The small parcel of real estate was acquired for a recited consideration of \$100.00 by deed from T. Ota and Yasu Ota, his wife, to Kaneichi Nii, dated July 23, 1938, and recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, T. H., on July 23, 1938, at Liber 1451, pages 418-420, inclusive;

8. Record title to the two parcels of real estate conveyed by the above-mentioned deeds remained in Kaneichi Nii from the date of their acquisition from T. Ota and Yasu Ota, his wife, down to and including the date that they were vested by the Attorney General of the United States. The titles to both properties were not Land Court titles;

9. The Territory of Hawaii levied and assessed real estate taxes against these parcels in the name of Kaneichi Nii and such taxes were paid by Kaneichi Nii prior to his departure to Japan in 1935, and since 1935 said taxes were paid for Kaneichi Nii by Shoso Nii in the name of Kaneichi Nii up to and including the time that the parcels were vested by the Attorney General of the United States, as successor to the Alien Property Custodian;

10. Shoso Nii, the plaintiff herein, was born on January 3, 1914, in the Territory of Hawaii, and is a citizen of the United States of America and the only son of Kaneichi Nii. Kaneichi Nii and his wife, Saku Nii, had three daughters, one of whom died. The other two daughters live with their parents in Japan. Shoso Nii [229] made two trips to Japan, one in 1920 and one in 1941. He lived in Japan with his father, Kaneichi Nii, from July, 1941, to October,

1947, at which time he returned to his home in Hawaii, where he has since resided ;

11. As of January 2, 1933, Kaneichi Nii, the father of Shoso Nii, made, executed, and delivered a Bill of Sale conveying the father's store at Waipahu, Oahu, T. H., to Shoso Nii, his son. This Bill of Sale was duly recorded and effectively made a gift of said store to said son. A true and correct copy of said Bill of Sale is in evidence. (Exhibit A). Said Bill of Sale is recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu at Liber 1205, page 26 ;

12. In 1938 the plaintiff negotiated for the purchase of the small parcel of real estate which is part of the property involved in these proceedings. The plaintiff cause the deed to the small parcel of real estate to be made out in the name of Kaneichi Nii, his father, as grantee. At that time the plaintiff knew that title to he large parcel of real esate was also in the name of his father, Kaneichi Nii ;

13. In 1939, Shoso Nii caused two powers of attorney to be drafted and forwarded to Japan, where the said powers of attorney were duly executed by Kaneichi Nii and Saku Nii (mother of the plaintiff), and said powers of attorney were acknowledged before a Vice Consul of the United States of America at Kobe, Japan, on February 7, 1949, and returned to the Territory of Hawaii and duly recorded in the Office of the Registrar of Conveyances (Exhibit No. I and Exhibit J) ;

14. On October 14, 1948, Kaneichi Nii, plaintiff's father, testified in these proceedings and referred to

the real estate which is the subject matter of these proceedings as "my properties in Hawaii". [230]

15. Shoso Nii, the plaintiff herein, by instrument duly executed and recorded in the Bureau of Conveyances (Exhibit C) constituted Katsutoshi Mikami, his attorney-in-fact, and at the time that the real estate, which is the subject matter of this lawsuit, was vested, Katsutoshi Mikami was the attorney-in-fact for Shoso Nii. A copy of Vesting Order No. 9777, dated September 12, 1947, was served upon Katsutoshi Mikami and received by him.

16. At the time that he filed his answer in these proceedings, the defendant filed a counterclaim under Section 17 of the Trading with the Enemy Act, as Amended (50 U.S.C.A. Section 17) and the plaintiff filed an answer to the counterclaim of the Defendant;

17. Vesting Order 9777, dated September 12, 1947, vested among other things:

"(a) Real property situated at Waikele, Wai-pahu, Oahu, T. H., particularly described in Exhibit A, attached hereto and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances, thereto, and any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property, and

"(b) That certain debt or other obligation owing to Kaneichi Nii, also known as Kenichi Nii by Shoso Nii, doing business as S. Nii Store, arising out of rents collected from the property described in subparagraph 2-a hereof, and any and all rights to demand, enforce and collect the same."

18. Katsutoshi Mikami, the duly authorized at-



torney-in-fact for Shoso Nii, the plaintiff, filed an accounting with the defendant-and-counter-plaintiff for the rental income from the real estate herein involved for the period July 1, 1941, through October, 1947, and a copy of the accounting submitted by said Katsutoshi Mikami is in evidence in these proceedings (Exhibit 3-D). This accounting shows that Shoso Nii is now liable to pay to the defendant-and-counter-plaintiff the sum of \$3,169.01 for the period from July 1, 1941, through October, 1947. [231] However, neither Shoso Nii nor any person acting on his behalf has made any accounting to the defendant-and-counter-plaintiff for the income for the period from May, 1935, to and including July, 1941.

19. Under and by virtue of Vesting Order No. 9777, the Attorney General of the United States, as Successor to the Alien Property Custodian, is entitled to obtain from Shoso Nii, the plaintiff, an accounting and a payment of all the net income from the subject real estate for the period May, 1935, to June 30, 1941, inclusive.

20. A Turnover Directive addressed to Shoso Nii and directing that he turn over the aforementioned sum of \$3,169.01 was served on Shoso Nii on August 30, 1948, by the defendant-and-counter-plaintiff, but up to and including the present date, Shoso Nii has not complied with the said Turnover Directive.

21. On October 26, 1948, the defendant-and-counter-plaintiff filed a petition in these proceedings under Section 17 of the Trading with the Enemy Act requesting an order of Court directing Shoso Nii to pay the aforesaid sum of \$3,169.01 to the counter-plaintiff, but the Court held in abeyance its ruling

on said petition until such time as there should be a final adjudication of the issues in this case.

Dated at Honolulu, T. H., January 26, 1949.

/s/ J. FRANK McLAUGHLIN,

Judge of the United States District Court of the Territory of Hawaii.

Approved as to form:

.....,  
Attorney for Shoso Nii.

/s/ RAY J. O'BRIEN,

/s/ LEON R. GROSS,

Attorneys for the Attorney General of the United States, as Successor to the Alien Property Custodian.

Receipt of copy acknowledged.

/s/ SHIRO KASHIWA,

Attorney for Shoso Nii.

[Endorsed]: Filed Jan. 26, 1949. [232]

---

[Title of District Court and Cause.]

## CONCLUSIONS OF LAW

1. The plaintiff has failed to establish his interest in the vested property in that his claim to having had at the date of vesting an equitable title by way of gift to the larger tract is not supported by convincing satisfactory evidence.

2. As to both parcels, the record title to each upon the date of vesting stood in the father's name, and the Custodian stands in the same position as a bona



fide purchaser for value, thus cutting off any and all equities which the plaintiff might otherwise have had against his father with respect to the vested property.

3. Upon the counterclaim the Custodian is entitled to recover all rents collected by the plaintiff from his father's premises from May, 1935, to the date upon which the obligation to pay over the same to his father was vested in the Custodian, namely September 12, 1947.

As to said net rents for the period July 1, 1941, to September 12, 1947, the plaintiff's attorney-in-fact during said period having accounted for the same in the sum of Three Thousand One Hundred Sixty-Nine Dollars and One Cent (\$3,169.01), the order to enforce the turnover directive heretofore withheld will now issue and be complied with within thirty (30) days and moneys paid over pursuant thereto shall be credited against the judgment on the counterclaim.

For the period May, 1935, to July 1, 1941, the plaintiff shall account within thirty (30) days for net rents collected by him from said premises.

Dated at Honolulu, T. H., January 26, 1949.

/s/ J. FRANK McLAUGHLIN,  
Judge.

[Endorsed]: Filed Jan. 26, 1949. [235]

In the United States District Court  
for the District of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General as Successor to  
the Alien Property Custodian,

Defendant.

and

TOM C. CLARK, Attorney General as Successor to  
the Alien Property Custodian,

Counter Plaintiff,

vs.

SHOSO NII,

Counter Defendant.

### OPINION

An oral decision was rendered in this matter at the conclusion of lengthy arguments following the trial.

As a supplement thereto, this memorandum opinion is prepared to accompany the formal Findings of Fact and Conclusions of Law.

The facts found, as I have already indicated, do not bring to my mind a conviction that the plaintiff's father made a gift to him of all of his real estate in Hawaii, as alleged, in 1935.

The gift allegedly made, it is argued, was made at [237] the last supper of the family prior to the father's permanent departure for Japan. The only evidence upon the point is the plaintiff's uncorrobo-

rated testimony to the effect that upon this occasion his father made an oral gift to the plaintiff of all of his real estate in Hawaii. Upon this bald assertion the plaintiff spells out a theory of an equitable gift good as against the Custodian, for it is admitted in the face of the record that legal title then and until the date of vesting in September, 1947, remained in the father.

In an attempt to bolster up his own testimony upon this point, the plaintiff

(a) States that from the time he was graduated from grammar school and was registered to enter high school his father prevailed upon him to cease his schooling and to come into the store with him, in exchange for which the father promised to give the plaintiff, when he went to Japan permanently, all of his property in Hawaii. This promise we may assume, though also resting upon plaintiff's testimony alone, was made, and as plaintiff says, repeated from time to time whenever plaintiff got restless and expressed a desire to return to school. Indeed, it appears that to have his way the father arranged to provide the son with both a wife and an automobile.

(b) Produces a document said to be a will executed by the father in 1932 which if valid when the father dies would give all his property to the plaintiff. This document oddly issues out of plaintiff's possession, but the fact that it bears the father's signature is corroborated. The plaintiff relies upon this document as taking the case [238] out of the Statute of Frauds, it being a writing signed by the party through whom the Custodian claims. The writing,

however, was not intended to be effective until the father died, and he is still alive.

(c) Points to the conceded fact that in 1933 the father by bill of sale gave the plaintiff his store, and put a savings account, presumably the store's, in the plaintiff's name.

(d) States that he built and paid for two houses upon the large parcel of land in dispute; collected and kept the rents; and paid all Federal and Territorial taxes with respect thereto, which were billed to his father as to real estate taxes.

(e) Points to the fact that his father prior to leaving for Japan told, as the witness Ikinaga testified, Ikinaga that he was going to give all his property in Hawaii to the plaintiff. And further since 1936 although the father's stock in the Waipahu Garage stood in the father's name, Ikinaga paid the dividends to the plaintiff as the father had told him to do so. Not until 1939 did the corporation, however, transfer the stock to the plaintiff's name, but it did so then pursuant to the plaintiff signing the certificates "Kaneichi Nii by Shoso Nii." At this time the plaintiff had his father's power of attorney, although the stock transfer does not reflect it.

(f) Points to the fact that in 1940 the plaintiff sold, by using the power of attorney from his father, a piece of real estate standing in his father's name and kept the proceeds. [239]

Over and against these things to which the plaintiff points and upon which he argues an equitable gift of real property are the undisputed facts that:

1. The father testified by way of deposition that prior to going to Japan he verbally gave the store

to his son (he apparently forgets the bill of sale), and that after returning to Japan “\* \* \* I made a power of attorney to Shoso Nii at the American Consulate in Kobe about December, 1935, to dispose of my properties in Hawaii.” This power of attorney the plaintiff himself had prepared in Hawaii and sent to his father in Japan for execution, which time of course was subsequent to the alleged equitable gift. The plaintiff is unable to explain why if the property was his as claimed, he asked for and received a power of attorney from his father instead of a deed. Clearly, the father knew how to dispose of his property effectively if he wished to, as illustrated by the bill of sale to the store and his purported will, and had he given the real estate to the plaintiff would have then or later given him a deed and not a power of attorney to deal with property he still maintained was his, the father’s.

After trial and decision, the plaintiff moved to reopen the case to take the father’s deposition anew. The plaintiff then produced a letter from his father saying he did not understand the interpreter. The motion was denied, for the record clearly shows that before signing Exhibit B plaintiff’s sister was sworn to interpret the then typed deposition to her father before he signed it.

Maybe the father misled the son, but the uncontradicted [240] evidence is that the father states he gave the son a power of attorney to deal with “my” property in Hawaii and the plaintiff accepted it and acted under it.

And even if I were satisfied with the plaintiff’s story—which I am not—as to the larger parcel of



real estate and also as to the smaller one serving as a right of way to the larger tract which the plaintiff bought but oddly took title thereto in his father's name—as to both—a further reason for concluding that the plaintiff cannot here recover is that the Custodian was entitled to rely upon the record title in the same manner and to the same extent as a bona fide purchaser would have been. Any equities which the plaintiff might have had were thus cut off when the property was vested as the father's, and as the records of the Territorial Bureau of Conveyances showed it to be.

The plaintiff having failed to prove his interest in the vested property by a preponderance of credible evidence, the prayer of the complaint is denied.

Upon the counterclaim the Custodian is entitled to judgment.

The withheld order enforcing the turnover directive will now issue requiring the plaintiff to turn over within thirty (30) days Three Thousand One Hundred Sixty-nine Dollars and One Cent (\$3,-169.01), representing accounted for net rentals from the premises from July 1, 1941, to September 12, 1947.

The plaintiff will also account for net rentals within thirty (30) days for the period May, 1935, to July 1, 1941.

Dated at Honolulu, T. H., January 26, 1949.

/s/ J. FRANK McLAUGHLIN,  
Judge.

[Endorsed]: Filed Jan. 26, 1949. [241]

In the United States District Court  
for the Territory of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General as Successor to  
the Alien Property Custodian,

Defendant.

and

TOM C. CLARK, Attorney General as Successor to  
the Alien Property Custodian,

Counter Plaintiff,

vs.

SHOSO NII,

Counter Defendant.

JUDGMENT ORDER

This cause having come on for a trial of the issues upon the Complaint filed herein by the Plaintiff and the Answer thereto filed by the Defendant, and upon the Counterclaim filed herein by the Defendant and Counter-Plaintiff and the Answer to said Counterclaim filed herein by the Plaintiff and Counter-Defendant; a trial of the issues having been had, and this cause having been submitted to the Court upon the testimony and evidence and exhibits of the respective parties introduced at the trial held on November 29, 1948, November 30, 1948, and December 1, 1948; the Court having heard the arguments of counsel, and being fully advised in the premises; and the [242] Court having entered its Findings of Fact and Conclusions of Law, and having filed its Memorandum Opinion in these proceedings;

It Is Hereby Ordered, Adjudged, and Decreed as follows:

1. Kaneichi Nii, also known as Kenichi Nii, is an enemy alien and a national of a designated enemy country (Japan) within the meaning of the Trading with the Enemy Act, as amended, (U.S.C.A. Title 50), and executive orders issued under and pursuant thereto;

2. At the date of vesting, the real property involved in this action was "property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of (a) "national of a designated enemy country (Japan);"

3. The Plaintiff, Shoso Nii, has no interest, right, or title in the real property within the meaning of Section 9 of the Trading with the Enemy Act, as amended;

4. The Complaint filed by Shoso Nii is hereby dismissed, and costs are assessed against Shoso Nii in the sum of Thirty and 18/100 Dollars (\$30.18);

5. Shoso Nii shall, on or before February 23, 1949, account for and pay over to the Attorney General of the United States, as Successor to the Alien Property Custodian, all of the net income from the real property vested under Vesting Order No. 9777, for the period May 1, 1935, to and including October 1, 1947.

Dated at Honolulu, T. H., January 26, 1949.

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District Court for the Territory  
of Hawaii.

Entered in Docket 1-27-49.

[Endorsed]: Filed Jan. 26, 1949. [243]

[Title of District Court and Cause.]

ORDER DIRECTING ACCOUNTING AND PAY-  
MENT UNDER SECTION 17, TITLE 50,  
U.S.C.A., AS AMENDED

Now, on this 26th day of January, A.D. 1949, it appearing to the Court that on October 26, 1948, the Attorney General of the United States, as Successor to the Alien Property Custodian, Counter Plaintiff, did file in these proceedings his petition pursuant to Section 17 of the Trading with the Enemy Act, as amended (U.S.C.A. Title 50, Section 17), and it further appearing that on October 28, 1948, an Amended Order and Rule to Show Cause was issued by this Court directed to Shoso Nii as Counter Defendant; and

It further appearing that this Court reserved its ruling upon the petition of the Attorney General of the United States under Section 17 of the Trading with the Enemy Act until after there had been a trial of the issues in this cause; and [244]

It now appearing that there has been a trial of the issues in this cause and that the Court has entered its findings of fact, conclusions of law, memorandum of opinion, and judgment, simultaneously with the entry of this order;

It Is Hereby Ordered, Adjudged, and Decreed That:

1. Shoso Nii, on or before February 23, 1949, pay over to the Attorney General of the United States, as Successor to the Alien Property Custodian (or

his duly authorized representatives), the sum of Three Thousand One Hundred Sixty-nine and 01/100 Dollars (\$3,169.01) pursuant to Turnover Directive signed by the Attorney General of the United States on August 20, 1948, and served on Shoso Nii on August 30, 1948; and

2. That the said Shoso Nii shall, on or before February 23, 1949, account for and pay over to the Attorney General of the United States, as Successor to the Alien Property Custodian, or his duly authorized representatives, the net income from the vested real property involved in these proceedings for the period from May 1, 1935, to and including July 1, 1941.

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District Court for the Territory  
of Hawaii.

Approved as to form:

.....,  
Attorney for Shoso Nii.

/s/ LEON R. GROSS,  
Attorneys for the Attorney General of the United  
States, as Successor to the Alien Property  
Custodian.

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 26, 1949. [245]



[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Shoso Nii, plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Judicial Circuit from the entire "Judgment Order" entered in this action on the 26th day of January, 1949, and from the "Order Directing Accounting and Payment under Section 17, Title 50 U.S.C.A., as amended" entered in this action on the 26th day of January, 1949.

Dated at Honolulu, T. H., this 23rd day of February, A.D. 1949.

SHOSO NII,

Plaintiff,

By /s/ SHIRO KASHIWA,

Attorney for Appellant.

[Endorsed]: Filed Feb. 23, 1949. [247]

---

[Title of District Court and Cause.]

### COST AND SUPERSEDEAS BOND

Know All Men by These Presents:

That I, Shoso Nii, as principal, and Henry Jinichi Tsumoto, as surety, are held and firmly bound unto Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, defendant, in the sum of Seven Thousand Eight Hundred and No/100 Dollars (\$7,800.00); to which payment well and truly to be made we bind ourselves and our respective heirs, executors, administrators and assigns, jointly and severally, by these presents.

Signed and sealed with our seals and dated this 23rd day of February, 1949.

Whereas, Shoso Nii has prosecuted his appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment order and Order Directing Accounting and Payment under Section 17, Title 50, U. S. C. A., as amended, entered in this cause by the United States District Court for the Territory of Hawaii on the 26th day of January, 1949; [249]

Now, Therefore, the condition of this obligation is such that if the above-named plaintiff, principal herein, shall prosecute his appeal to effect and pay and satisfy in full the judgment order and the Order Directing Accounting and Payment under Section 17, Title 50, U. S. C. A., as amended, together with costs; interest and damages for delay if said appeal is dismissed or if the said judgment order and Order Directing Accounting and Payment under Section 17, Title 50, U. S. C. A., as amended, is affirmed and further pay and satisfy such modification of the Judgment Order and Order Directing Accounting and Payment aforementioned and such costs, interest and damages as the said United States Circuit Court of Appeals for the Ninth Circuit may adjudge and award, then this obligation to be void, otherwise to remain in full force and effect.

(Seal)            /s/ SHOSO NII,  
Principal.

(Seal)            /s/ HENRY JINICHI TSUMOTO,  
Surety.

Territory of Hawaii,  
City and County of Honolulu—ss.

Henry Jinichi Tsumoto, being first duly sworn,  
on oath, deposes and says:

That he is the surety on the foregoing Cost and Supersedeas Bond; that he is a citizen of the United States of America; that he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that he is over 21 years of age; that he is not under guardianship; nor is he restrained or prevented from [250] dealing with his property by any legal proceedings; that he is the owner of unencumbered property situated in the Territory of Hawaii aforesaid which is subject to execution and worth more than double the amount of the penalty specified in the foregoing bond, over and above all debts, liabilities and obligations.

/s/ HENRY JINICHI TSUMOTO.

Subscribed and sworn to before me this 23rd day  
of February, A.D. 1949.

(Seal)        /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1951.

#### APPROVAL OF BOND

The foregoing Cost and Supersedeas Bond is  
hereby approved.

Dated at Honolulu, T. H., this 23rd day of Feb.,  
A.D. 1949.

/s/ J. FRANK McLAUGHLIN,  
Judge of the United States District Court of the  
Territory of Hawaii.

[Endorsed]: Filed Feb. 23, 1949. [251]

---

[Title of District Court and Cause.]

STAY OF JUDGMENT ORDER AND ORDER  
DIRECTING ACCOUNTING AND PAY-  
MENT UNDER SECTION 17, TITLE 50, U.  
S. C. A., AS AMENDED

It Is Hereby Ordered that any and all payments  
and any and all further proceeding required by the  
Judgment Order and Order Directing Accounting  
and Payment under Section 17, Title 50, U. S. C. A.,  
as amended, is hereby stayed during the pendency  
of the appeal entered in the above-entitled cause.

Dated at Honolulu, T. H., this 23rd day of Feb.,  
A.D. 1949.

/s/ J. FRANK McLAUGHLIN,  
Judge of the United States District Court of the  
Territory of Hawaii.

[Endorsed]: Filed Feb. 23, 1949. [253]

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss:

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following listed original pleadings, exhibits, and transcript of proceedings of record in said cause:

#### Original Pleadings

Complaint and Summons.

Answer.

Answer to Counter-Claim.

Motion for Issuance of Commission to Take Deposition; Notice of Motion; and Affidavit of Shiro Kashiwa.

Order of Motion for Issuance of Commission to Take Deposition Appearance of Counsel.

Stipulation and Order for Pre-Trial Examination of Shoso Nii, Plaintiff.

Stipulation for Extension of Time for Filing Cross-Interrogatories on Behalf of Defendant Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian.

Notice of Motion for Summary Judgment.

Motion to Strike Affidavit of Leon R. Gross and Notice of Motion.

Motion for Summary Judgment.

Affidavit of Leon R. Gross in Support of Motion for Summary Judgment.



Affidavit of Albert K. Makinney.

Affidavit of Mark N. Huckestein. [270]

Motion to Strike Affidavits and Notice of Motion.

Request for Admission of Genuineness of Documents and Request for Admission of Facts Pursuant to Rule 36 of the Rules of Civil Procedure.

Affidavit of T. Ota in Support of Motion of Tom C. Clark for a Summary Judgment.

Admission of Facts and of Genuineness of Documents.

Counter Affidavit of Shoso Nii in Answer of Affidavit of T. Ota Filed in Support of the Motion of Tom C. Clark for Summary Judgment.

Petition of the Attorney General of the United States Pursuant to Section 17 of the Trading with the Enemy Act as Amended.

Amended Order and Rule to Show Cause.

United States Marshal's Return.

Answer to Petition of Attorney General under Section 17.

Oral Decision on the Petition of the Attorney General of the United States for the Entry of an Order under Section 17 of the Trading with the Enemy Act, as Amended, Directing Shoso Nii to Turn Over Forthwith the Property Vested under Vesting Order No. 9777.

Motion for Leave to File Amended Complaint.

Motion to Reopen Case to Take Additional Testimony.

Memorandum of Tom C. Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, in Opposition to Motion to Reopen

Case to Take Additional Testimony, filed by Shoso Nii.

Motion for Findings of Facts.

Findings of Fact by the Court after a Trial of the Issues.

Conclusions of Law.

Opinion.

Judgment Order.

Order Directing Accounting and Payment under Section 17, Title 50, U. S. C. A., as Amended.

Notice of Appeal.

Cost and Supersedeas Bond.

Stay of Judgment Order and Order Directing Accounting and Payment under Section 17, Title 50, U.S.C.A., as Amended.

Statement of Points.

Designation of Record.

Designation of Record on Appeal by Defendant and Counter Plaintiff-Appellee.

Exhibits: Plaintiff's Exhibits A-1, A-2, B, C, D-1 to D-10, incl., E-1, E-2, L, M, N, O, and P. Plaintiff's Exhibits F, G, H, I, J, and K are attached to and are a part of the original Affidavit of Mark N. Huckestein listed above. United States Exhibits Nos. 1, 2A to 2M, incl., and 3-A to 3-E, incl.

Transcript of Proceedings: November 29, November 30, and December 1, 1948. [271]

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of March, A.D. 1949.

(Seal) /s/ WM. F. THOMPSON, JR.,  
Clerk, United States District Court, District of  
Hawaii. [272]

In the United States District Court for the  
Territory of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General, as Successor  
to the Alien Property Custodian,  
Defendant.

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S.  
District Court, Honolulu, T. H., on November 29,  
1948,

Before Hon. J. Frank McLaughlin, Judge.

Appearances: Shiro Kashiwa, Esq., appearing for  
the Plaintiff; Leon R. Gross, Esq., Manager, Of-  
fice of Alien Property, Hawaii, appearing for the  
Defendant; Howard K. Hoddick, Assistant United  
States Attorney, appearing for the Defendant. [1\*]

The Clerk: Civil No. 837, Shoso Nii versus Tom  
C. Clark, for trial.

Mr. Kashiwa: Your Honor, at this time, to meet  
this case, I am filing a motion for amended com-  
plaint under Rule 15. I have served a copy on Mr.  
Gross.

Mr. Gross: About two minutes ago, if the Court  
please, Mr. Kashiwa handed me a sheaf of papers  
which Mr. Hoddick is now in the process of look-

---

\* Page numbering appearing at foot of page of original certified  
Reporter's Transcript.

ing through. He stated he wanted to file a slightly amended complaint. I told him that the case was set for trial this morning at nine o'clock, that the matter was pending for eleven months, and I would object to the filing of any amended papers at this time.

The Court: What is the nature of this proposed amendment and why does it come at this late hour?

Mr. Kashiwa: As is true in all cases, before the trial of a case, if you look very closely into the facts—here you find facts, matters which should have been alleged in the original complaint. Now, your Honor, the difference in the complaint is, one is a difference in the price of the second piece of property involved, that is instead of a hundred dollars it is one hundred seventy-five dollars. And, secondly, the main change is with relation to the facts before the father left for Japan. And it is mainly some additions to paragraph five, your Honor. [1-a]

The Court: Well, presumably you knew all the facts when you filed the suit. It certainly comes late, two minutes before trial, that you seek to make these amendments. What is the reason for the fact that these alterations haven't been requested before?

Mr. Kashiwa: As stated in the affidavit, your Honor, the case involves facts about 20 years ago, 20 or more years ago, and it has been exceedingly difficult to get the facts situation. As far as the cause of action, it is not changed at all, your Honor.

The Court: The problem of proof, however, may be different. The situation, very plainly, is that the other side came to court to meet the petition as it stood previously.

Mr. Gross: If the Court please, Mr. Hoddick, who has been trying to read this 12-page pleading in three minutes,—now it is five minutes that we have had it—tells me that it is based on an entirely different theory and makes an effort to get around the law which we have previously propounded to this Court on the various preliminary motions. I'd like to request that the Court enter an order at this time denying leave to file this amended complaint on the grounds that it was not filed timely, that it endeavors to set up an entirely new theory, that the Plaintiff's Counsel has had ample time, that we have appeared before this Court on at least four different occasions on preliminary motions, and that the facts [2] which the Plaintiff's Counsel attempts to set up in this complaint at this time are facts which I would necessarily have to investigate, and that I certainly could not go to trial on a pleading that I had not had a chance to examine thoroughly and determine what kind of a reply pleading to make. And if Counsel is trying to stall for time—when he called me previously and asked for continuance in the case last week, I stated to him that if it met with the approval of the Court I had no objections to a continuance. That still stands. On the other hand, if the case is set for trial and Counsel proposes to go to trial, I would strenuously object to being compelled to go to trial on



a record which was not in proper order. There is an amended complaint and no answer. I would certainly not want my answer to the original complaint to stand as an answer to this complaint, particularly since Mr. Hoddick informs me that the complaint is drawn on an entirely different theory.

Rule 15, which Counsel refers to, says:

“A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party.” [3]

Mr. Kashiwa: May it please the Court, I'd like to present this case as thoroughly as possible. It is a vitally important case even as far as the law is concerned. Now, your Honor, if Counsel is going to stick to technicalities, I am right now notifying him that his answer—I know he is going to rely on the statute of frauds, your Honor—his answer filed in this case doesn't in any way refer to any statute of frauds. And under Rule 15 he must specifically notify, set up an affirmative defense on the statute of frauds. I am going to warn counsel ahead of time that there is such a rule, and if he is ever going to rely on it, if he is going to be technical now, I will stand on my technicalities, your Honor. I believe that that is the sole defense they have, your Honor. And it is my contention

that Counsel should not be heard at a later time, that the statute will be relied on as a defense. Rule 15 requires that they are affirmatively pleaded, and there is nothing in the answer affirmatively pleading the statute of frauds, your Honor.

Mr. Gross: I suggest that Counsel take care of his pleadings and we will take care of our pleadings. But I don't suggest that Counsel wait until two minutes before a case is set for trial and then file an amended complaint which is based on an entirely different theory and is a very subtle effort by the attorney for the Plaintiff to take this case out of the adjudicated decisions which he knows would compel [4] the Court to hold against him.

The Court: What is the different theory that you contend as spelled out by this proposed amended complaint?

Mr. Gross: If the Court please, from what Mr. Hoddick tells me, in a matter of eight or nine minutes one cannot possibly analyze the complaint, and Mr. Hoddick tells me that there is a great deal of material which may or may not be relevant which is alleged in this complaint, going back for years prior to the alleged gift here. This is a case, if the Court please, where we already have on file admitted facts, and in my opinion the record of this case is sufficient right now so that the Court without hearing one particle of testimony upon the admissions of facts which have been made by the Plaintiff could decide the issues without hearing any testimony whatsoever. And the Court indicated at the hearing on the motion for summary judg-

ment that justice is an excess of caution and that without any possible doubt the Plaintiff might claim that he had not had his day in court, that if the Plaintiff claimed such he would give the Plaintiff an opportunity to be heard further. But I believe that the Court indicated very strongly at that time that he felt that practically all of the facts which were germane to the issues here stood admitted on the record.

The Court: Well, I don't know whether this spells out a different theory on the cause of action or not. [5]

Mr. Gross: I don't either. But I certainly can't go to trial upon a complaint that was served on me ten minutes ago after the case had been pending for eleven months. I'd like to state further that the answer to the original complaint here was prepared in our office in Washington; it was not prepared here. And I would not take the responsibility of proceeding to trial on an amended complaint without certainly first an opportunity of having the same people in Washington who examined this complaint originally examine this amended complaint and determine whether they want to file a new answer. If Counsel wants to enter his motion for leave to file his complaint and continue it, continue his motion for leave to file, I have no objection to that. But obviously we can't go to trial this morning on that state of the record. I am prepared to proceed upon the record as it is now.

The Court: Do you want to say something?

Mr. Kashiwa: Your Honor, as far as I am

concerned I have stated in my motion that I am perfectly willing to grant Mr. Gross or his boss ample time to answer the amended complaint. I understand that it is discretionary with the Court.

The Court: Yes, but you have a very narrow area of discretion after they have reported here that this pleading has stood eleven months, and the case is set for trial and two minutes before the trial you seek to amend over the opposition [6] of the other side. It is a very, very narrow area of discretion.

Mr. Kashiwa: Your Honor, even after the proof is on, still amendments may be allowed, your Honor.

The Court: To conform to the proof.

Mr. Kashiwa: Yes.

The Court: But without changing the cause of action. Do you contend that this proposed amendment alters in any way the basic cause of action previously set forth?

Mr. Kashiwa: No, your Honor, it is the same. We contend that it was a gift.

The Court: Well, it looks to me as if you contend that your principle allegations of change are contained in paragraph five. It looks to me as if most of that is pleaded evidence which technically forms no part of the pleadings; it certainly doesn't conform to the basic rule of the Federal Civil Rules that the statement of the cause of action shall be a brief, concise and plain statement. It looks to me as if this amendment in paragraph five upon which you place the greatest reliance as containing the principle alterations of the complaint, to re-

peat, that what you are doing is that you are pleading your evidence, and the contention advanced by you that there is no change in the cause of action, believing that your paragraph five is simply allegations of evidence rather than essential allegations to state a cause of action, coming as [7] it does after all these preliminaries,—this file is now three inches thick—and two minutes before trial after eleven months, doesn't move me under Rule 15, particularly in view of the opposition, to grant your motion at this time. So I am going to deny it.

Mr. Kashiwa: Your Honor, may the amended pleading as recited in the motion, as attached to the motion——

The Court: The whole thing may become part of the file.

Mr. Kashiwa: Yes.

The Court: Very well. We are proceeding to trial as scheduled on the pleadings as they stood as of nine o'clock this morning and still stand.

Mr. Kashiwa: Ready for the Plaintiff, your Honor.

Mr. Gross: Ready for the Defendant.

The Court: Very well. Does the Plaintiff wish to make an opening statement?

Mr. Kashiwa: Your Honor, there are some witnesses in here on my side. I do not know whether there are any witnesses on the Government's side, but——

Mr. Gross: Do you want to make a motion to exclude your own witnesses?

Mr. Kashiwa: How about you?



Mr. Gross: I have no witnesses.

Mr. Kashiwa: You have no witnesses?

Mr. Gross: I will make a motion to exclude yours, if you [8] want me to assist you.

Mr. Kashiwa: That is not a motion for my——

Mr. Gross: Well, I will make a motion that all witnesses be excluded except one witness for each side.

The Court: Very well. All persons in the courtroom who intend to be witnesses, who are to be called as witnesses, save and except one to remain to assist the respective Counsel, will leave the courtroom.

Mr. Gross: The Plaintiff is also here. Does the ruling of the Court apply to him, that is, the Plaintiff and one witness?

The Court: No, a witness.

Mr. Gross: If the Court please, I assume that Counsel has responded in answer to the Court's question that he does not desire to make an opening statement.

The Court: I haven't heard him answer. I would expect an answer.

Mr. Kashiwa: Your Honor, I will make an opening statement. The property in question, as it now stands, is in Waipahu situated between the main highway and the old highway on a newly-put-in highway which was put in about 1940. And in 1932 Mr. Kaneichi Nii, who is the father of the Plaintiff in this case, bought the property under an agreement of sale, in December, 1932. By that I mean the early part, he bought it under

an agreement of sale, and then in December, 1932, he [9] got title to the property. He purchased other property in Waipahu at about the same time.

I will prove, your Honor, that the Plaintiff is the only son of Kaneichi Nii. Kaneichi Nii was a highly successful business man in Waipahu; that he in 1921 returned to Japan and——

The Court: “He” being what, the son?

Mr. Kashiwa: The father.

The Court: You will help me if you will add “father” and “son” because I can’t keep these names straight.

Mr. Kashiwa: The father returned to Japan in 1921 and built an immense home there for himself and acquired a lot of property in Japan. He came back after that and started another store, this being the present Nii store by the——

Mr. Gross: If the Court please, I hate to interrupt Counsel. I’d like to have this witness excluded while Counsel is making his opening statement. The witness is now sitting on the witness stand.

The Court: Overruled. Go ahead.

Mr. Kashiwa: And in 1921 the store which is now there, now owned by the Plaintiff, was started again. And in 1928 Shoso Nii just graduated from the elementary school at Waipahu, and he decided to go ahead with his studies, but that due to his father’s inducement not to go ahead with his studies—he, in fact, had registered for higher education at the Kalakaua Junior High School here to enter the ninth grade and thereafter [10] go

into college. At that time there was no ninth grade at Waipahu. He wanted to go through high school and to college; he wanted to be some sort of a doctor. But due to his father's inducement—and at about that time they lost their favorite salesman—the father induced, in fact, went ahead and bought this child who was about 16 or 15 a valuable automobile just to induce him to stay home and work at the store with no compensation or wages, on the promise that everything he had in Hawaii, when he left Hawaii for the mainland, will be his; and furthermore, if in case he died, everything will be his anyway, he being the sole son also.

I will show your Honor that there was even a will executed to carry out all the intentions.

And in 1933, after this, Nii worked in the store for about five years. Nii was then just over 20. The Plaintiff's son was just over 20, and the store was turned over by the father to the son by duly executed bill of sale. And from then on the father, who was ill at that time with high blood pressure, had all intentions of going to Japan as soon as the son was fully capable of handling the business. He had enough property to take care of him for the rest of his life.

The store was transferred, and from the very time the store was transferred—before that, I will go back. The store was transferred in 1933. In 1932, while the property was still under an agreement of sale, the property in dispute, many [11] improvements were made on the property so that

income could be increased, and the purpose of that was so that when the father returned to Japan and the son and his wife, whom he had just before gotten from Japan—and this was known as a matched marriage—the son and the new wife would be able to get along when these improvements were put on. And after the store was turned over the father gave the son—in fact, Mr. Nii, the son, collected all the rentals from the property, the property in question, and he paid everything, taxes, income taxes, gross income taxes, and rental property taxes. Those are matters of record which I will show your Honor. And he exercised everything that an owner should exercise of the property.

The father had no lawyer but he dealt with an accountant called Omurei, who was not an attorney. And there was full intention to turn everything over to the son. But suddenly the eldest sister of the son, his eldest daughter, who was then in Japan, got very ill and he, the father, and the mother, suddenly had to leave for Japan. And they thereafter did not come back to the Territory.

Now, I will show your Honor that there was a bill of sale made when the father went to Omurei, the accountant; he had that made. And the father told us that due to the fact that all the rentals were permitted to be collected after the father went back to Japan, that he, the Plaintiff, in fact thought [12] that everything had been changed to his name, the store with the sale, all the legal

papers thrown in there in the safe. And in about 1938 he first discovered that the land in question was not yet changed into his name. And so he had powers of attorney drawn and sent to Japan. The powers of attorney are in the record of this cause now.

Now, right through the period from 1935 to 1941 he did everything to show that he was the beneficial owner of the property, the owner of the property. Now, in 1941, he suddenly had to leave for Japan. That was in June. We will show by National Service records, that is, by Selective Service Records, why he had to leave, and permission was granted to the Plaintiff to leave the Territory by the Waipahu board, six months' leave. And he left for Japan as soon as he could. And as soon as he got there things got pretty bad. The freeze came in about August of that year. And he intended to come back very soon but at the time he wanted to come back he discovered that no boats were coming this way. That he was informed. We still have a letter which we will introduce in evidence to the effect that the last boat was available through the Philippines and then Shanghai, but there was no guarantee of ever getting to Hawaii. And he did not go on that trip, but we will show that he made every effort to get back to his lawful residence in the Territory of Hawaii.

And in 1947, the latter part of November, just a short [13] time prior to the filing of this suit, he returned to the Territory. I forgot to mention the fact that he was born at Waipahu.

The Court: Very well. Swear the witness.



## HENRY JINICHI TSUMOTO,

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

## Direct Examination

The Court: What is your name? State your name, age, residence, occupation and citizenship? Speak loud enough so everybody can hear you.

The Witness: Henry Jinichi Tsumoto.

The Court: How do you spell your middle name?

The Witness: J-i-n-i-c-h-i.

The Court: How old are you?

The Witness: Forty-eight.

The Court: Where do you live?

The Witness: 1350 Dillingham Boulevard.

The Court: What is your occupation?

The Witness: Lumber business.

The Court: What is the name of your business?

The Witness: Kalihi Lumber.

The Court: And of what country are you a citizen or subject? [14]

The Witness: American.

The Court: Exclusively? Only? Are you a citizen of the United States only?

The Witness: Yes.

The Court: Take the witness.

Mr. Gross: Is he a citizen of the United States?

The Court: Yes, he said he was, and only.

Mr. Kashiwa: Your Honor, at this time, in order to get over the first obstacle in this case, I'd like to offer in evidence—this has no connec-

(Testimony of Henry Jinichi Tsumoto.)

tion with this witness—if it weren't for this, there is no use of continuing this case, that is, that a claim was filed with the Office of the Alien Property Custodian in this case on December 2, 1947. I have shown Mr. Gross a copy of the letter.

Mr. Gross: He just showed it to me now. I am willing to admit this document in evidence without stipulating that it proves that the claim has been filed. It proves that he received a communication from our office; that any document purporting to be a claim—that the copy of the claim is not attached to the letter itself. If he would attach a copy of the claim to the letter, I would be willing to stipulate to that.

Mr. Kashiwa: I will. (Handing a document to Mr. Gross.)

Mr. Gross: Do you want these to be marked as Plaintiff's Exhibit 1 for identification? [15]

Mr. Kashiwa: Yes. Instead of the original of the letter going in, I have an exact typewritten copy of that. May I substitute this typewritten copy of the letter?

Mr. Gross: After we have had an opportunity to compare it, no objection to a substitute. I'd prefer a photostatic copy, if the Court please.

The Court: An accurate copy will do. The original may be marked and the copy of the claim as one exhibit. And you will have leave to withdraw the original, which apparently is a reply from the Alien Property Custodian, and substitute therefor an accurate copy.

(Testimony of Henry Jinichi Tsumoto.)

Mr. Kashiwa: Yes, your Honor.

The Court: And the same will be what, Mr. Clerk?

Mr. Kashiwa: At the same time I make a substitution.

The Court: Well, subject to check it may be substituted. But the original is the one that becomes marked. And the same becomes, Mr. Clerk——

The Clerk: Is this for identification or as an exhibit?

The Court: Received in evidence.

The Clerk: Plaintiff's Exhibit "A."

(The document referred to was received in evidence as "Plaintiff's Exhibit A.")

Mr. Gross: Mr. Kashiwa, do you think it would make for easier reference if we marked each one of these sheets "A-1," "A-2," "A-3," and so forth?

The Court: Apparently you are not familiar with my system. Nobody marks it except the Clerk. He is the one that has got to keep the record. And in the instance where you have a series of things, like 15 or 20 photographs, you can let us know in advance that you propose to offer a series, and then the Clerk will be prepared to give them a series marking. But the Clerk controls the marking. That is Exhibit "A"?

The Clerk: Yes, your Honor.

The Court: Have you labeled it one and one or two?

(Testimony of Henry Jinichi Tsumoto.)

The Clerk: I was just going to ask you if you want the reply letter to the claim——

The Court: I should think the copy of the claim should be “A-1” and the reply “A-2.”

The Clerk: I will so mark them.

The Court: All right.

(The documents previously marked and received as “Plaintiff’s Exhibit A” were remarked and received in evidence as “A-1” and “A-2.”)

[Printer’s Note: Plaintiff’s Exhibits A-1 and A-2 are set out in full at pages 402 to 409 of this printed Record.]

The Court: Is that clear to everyone now? Copy of the Plaintiff’s claim to the Alien Property Custodian is Exhibit “A-1,” and the Custodian’s reply is “A-2.” All right. Proceed.

Q. (By Mr. Kashiwa): Mr. Tsumoto, where were you born? [17]           A. Kona, Hawaii.

Q. Did you ever live in Waipahu?

A. Yes.

Q. When did you move from Kona to Waipahu?           A. A long time, six years old.

Q. What year were you born?

A. 1899.

Q. And six years after that you went to Waipahu?           A. Yes.

Q. That is Waipahu of this Island?

A. Yes.

(Testimony of Henry Jinichi Tsumoto.)

Q. Since you moved to Waipahu when you were six years old, how long did you reside there?

A. After that I going—my mother is die and I going back with father to Japan, about six year, living in Japan and then come back again to Waipahu.

Q. How old were you when you went back to Japan?

Mr. Gross: If the Court please, I am sorry that I still haven't been able to get the witness' answer to the question. It was, how long did he live in Waipahu? I got when he went to Japan and he lived in Waipahu, but I don't understand what his answer is yet. I don't want to make a motion to strike. I'd just like to get the answer.

The Court: Well, all I know is that he was born in Kona, went when he was six years old to live in Waipahu, after which [18] time his mother died and he then went to Japan, went to Japan with his father for a time, returning to Waipahu. That's all he said so far.

Q. How old were you when your mother died?

A. Six years old.

Q. Your mother died when you were six years old?

A. Yes.

Q. That is when you came to Waipahu?

A. Yes.

Q. Is that the same year that you went back to Japan?

A. Yes.

Mr. Gross: If the Court please, I am afraid I am going to have to object to this entire line of



(Testimony of Henry Jinichi Tsumoto.)

questioning. I should like to state that as far as my understanding of the issues involved in this case is, they are as follows: that in 1947 the Office of Alien Property vested a piece of real estate; in the same year a suit was filed under Section 9 of the Trading With the Enemy Act claiming that the real estate did not belong to the vestee but belonged to the vestee's son, the Plaintiff. I cannot see the materiality or the relevancy or any other pertinency of a stranger to these proceedings testifying as to when his mother died, how long he lived in Waipahu, how they are related subjects.

The Court: Well, there is no relevancy except that it is background material. [19]

Mr. Kashiwa: That is all, your Honor, to show that he is familiar with the situation.

The Court: Proceed.

Q. You said that you went to Japan when you were six years old? A. Yes.

Q. Then when you moved from Kona to Waipahu, how long did you stay in Waipahu before going to Japan?

A. Just a couple of months, that's all. And then after 13 years old I come back from Japan and I live in Waipahu about 1921 or '22. I stay that long.

Q. You stayed in Waipahu up until 1921 or 1922? A. Yes.

Q. And then where did you go?

A. And then Honolulu.

(Testimony of Henry Jinichi Tsumoto.)

Q. And after 1921-'22 you have been in Honolulu continuously?      A. Yes.

Q. How many times have you been married?

A. Twice.

Q. Who was your first wife?

A. Mr. Nii's sister.

Q. You mean Shoso Nii's?

A. Yes, Shoso Nii's sister.

Q. And whose daughter was she? [20]

A. Daughter of Kaneichi Nii.

Q. Now, when did you get married?

A. That I don't remember good, but I was about 22 years old.

Q. What was her name?

A. Jinichi Tsumoto.

Q. No, her name?      A. Hatsuko Nii.

Q. How long did you live with Hatsuko Nii?

A. From the time to 1931 I live with her.

Q. What happened in 1931?

A. She was sick and go back to Japan.

Q. Did you go back with her?      A. Yes.

Q. How long did you stay in Japan?

A. I stay about three months, two months, I think.

Q. And did she come back with you?

A. No, she stay all the time.

Q. Did you know Kaneichi Nii?

A. Yes.

The Court: That is the father?

Mr. Kashiwa: Yes.

(Testimony of Henry Jinichi Tsumoto.)

Q. Do you know how much education Shoso Nii had?           A. Yes.

Q. What school? [21]

A. Just grammar school.

Q. What grammar school?           A. Waipahu.

Q. Did he go to junior high school or high school?

A. Yes, he want to go but he asked——

Mr. Gross: Just a minute. I think the answer is not responsive to the question. The question was, did he go to junior high school, and the witness started to say, I think he wanted to go.

Mr. Kashiwa: You answer yes or no.

The Court: Do you understand the question?

The Witness: Yes.

The Court: All right. Just answer it and then explain it later if you need to explain it. The question, to repeat, as I understand it, is, did the Plaintiff Shoso Nii go to junior high school or high school here?

A. No.

Q. Do you know why?           A. Yes.

Mr. Gross: I object to that question on the grounds that it is irrelevant.

The Court: Overruled.

Mr. Gross: And it calls for a conclusion. How can this witness state why this man Shoso Nii didn't go to high school? He may not have gone to high school for any number of reasons. [22]

The Court: He says he knows. He is testify-

(Testimony of Henry Jinichi Tsumoto.)

ing under oath. Proceed. The answer to the question was Yes.

Q. Why didn't he go to junior high school?

A. His father is very weak and he want to help him in store work.

Q. Now, after Shoso Nii graduated from elementary school in the eighth grade, what did Shoso Nii do?      A. He helping in store.

Q. What store?      A. His father's store.

Q. What was the name of that store?

A. Kaneichi Nii Store.

Q. And where was that store situated?

A. Middle of Waipahu City, Waipahu Town.

Q. Is the store in the same location now?

A. Yes.

Q. With relation to the plantation store, where is it?      A. What means that?

Q. With relation to the Waipahu plantation store, where is the Kaneichi Nii Store?

A. You mean the location?

Q. Yes.

A. It is a couple hundred feet—no, a couple thousand feet away from the Waipahu store to the town side.

Q. Was it on the main highway there? [23]

A. Yes.

Q. Now, what hours was this store open from in the morning to night?

Mr. Gross: If the Court please, how can this witness testify of his own knowledge what hours the store was open unless he was personally there

(Testimony of Henry Jinichi Tsumoto.)

all the time? I have no objection to this background material but I think that we are just loading the record with a lot of material that does not bear on the issues of this case.

The Court: Well, his method of knowing, if he does know, is something you can test out on cross-examination. All the witnesses are presumed to answer as of their own knowledge,—and the witness is under oath—as of their own knowledge as to what they know. I presume when they answer the questions they profess to be claiming that they know what they are talking about. If they don't, I presume that they will answer that they don't know. So that you will have your right to cross-examine on that subject. And, therefore, the objection is overruled.

A. Open about six o'clock and about 11-12 o'clock, at night eleven o'clock, I think, sometimes about twelve o'clock late, because I not all the time there but once in a while I went there and look and see.

Mr. Gross: Now I make a motion to strike on the grounds of his own answer. He wasn't there all the time. He stated, [24] he went there once in a while to look-see.

The Court: Overruled.

Q. You said six o'clock in the morning?

A. Morning.

Q. Now, do you know the property which is involved in this case?           A. Yes.

Q. Where is that situated?



(Testimony of Henry Jinichi Tsumoto.)

A. That is Waipahu, is in the middle of the town, Ewa side by the river.

Q. Is there a new highway at Waipahu now?

A. Yes.

Q. Now, with relation to the old highway and the new highway, where is this property?

A. Is between, between the new highway and old highway.

Q. Is there a road going between the two highways?

A. Not—yes, one side is the river and one side is the Waipahu river. I don't know what is the name but there is a river crossing there by the property.

Q. Would you go to the blackboard there and show us with relation to the two new highways where this property is?      A. Yes.

Q. By a new highway I mean the Farrington Highway.

A. Yes. This is the new highway (indicating on blackboard) and this is the old highway. [25]

Q. All right.      A. This is the new highway.

Q. Will you mark that "A"?

A. "A." That is new.

Q. Where is the old highway?

A. Old highway, this one. (Writing on blackboard.)

Q. What is this street over here?

A. This is Waipahu main street, old main street. That is Maunaloa Road.

Q. Will you mark that "C"?      A. "C."

(Testimony of Henry Jinichi Tsumoto.)

Q. And you mentioned about a river. Where is the river?      A. This is the river. (Indicating.)

Q. Is that the Waipahu River you mean?

A. Yes.

Q. Write "river" there. That's all. And that block you put there, that is the property?

A. Yes.

Q. All right. Now, you remember when Mr. Kaneichi Nii bought that property?

A. That I don't know, what time they bought it.

Q. But do you know of the fact that he did buy it?      A. Yes, I know he buy it.

Q. Now, at the time he bought that property, there were houses on it? [26]

A. One house, I think.

Q. Now how many houses are there on that property?

A. I am not sure but about three or——

Q. All right. Did you have anything to do with the building of those other houses?

A. What is that?

Q. Did you have anything to do with the building of the other houses on the property?

A. Yes, I sell him his materials.

Q. You mentioned that you were a lumber man?

A. Yes.

Q. Were you in the business at that time?

A. At that time in lumber but not too much, just firewood and lumber.

Q. Now, at that time where was this lumber

(Testimony of Henry Jinichi Tsumoto.)

which was used to build these houses and which you sold to him obtained?

A. That is, the lumber is used lumber bought from Schofield.

Q. Who got it from Schofield?

A. Woolley Contractors.

Mr. Gross: May I repeat my objections to this entire line of questions, if the Court please? Where he acquired the lumber that he sold to Mr. Kaneichi Nii is, I think, pretty far afield from the issues of this law suit. I move to strike the testimony. [27]

The Court: Overruled.

Q. Now, were you ever paid for that lumber?

A. That is long time—rate I get from Shoso Nii—

Q. What year was that?

A. That was about three or four years later.

Q. Shoso Nii paid you?

A. Yes, he paid me.

Q. Do you know why Mr. Nii went back, Mr. Kaneichi Nee, the father, went back to Japan in 1935?

A. Yes.

Q. Why did he go back?

A. He was very weak and he got property in Japan. That is why.

Q. Was your wife in Japan? A. Yes.

Q. After 1935 when the father went back to Japan, who took care of that property near that Waipahu River?

A. Shoso Nii took care of that.

(Testimony of Henry Jinichi Tsumoto.)

Q. Do you know who collected the rentals for the property?      A. Yes.

Q. Who did?      A. Shoso——

Mr. Gross: If the Court please,— —

The Court: Wait a minute. [28]

Mr. Gross: I'd like to object to that. Counsel has not laid any foundation for this man to be able to testify that he knows who collected the rents for the property.

The Court: He asked him if he knew. He said Yes.

Mr. Gross: All right. I will withdraw that.

The Court: Repeat the question.

(The reporter read the last question.)

The Court: Answer the question.

A. Shoso Nii collected.

Mr. Kashiwa: No further questions.

The Court: Cross-examination?

Mr. Gross: If the Court please, for the purpose of the record I'd like to renew at this time my motion to strike all of the testimony of this witness on the grounds that it is incompetent, irrelevant and immaterial, particularly immaterial to the issues raised by the pleadings here.

The Court: That may be, but I presume it is going to be connected up on the theory that I don't know the whole case at the moment, and I can't see where it fits into the picture, but it may. I will deny the motion. You may renew it later if it appears more clearly on the whole picture before the Court as being irrelevant. Before the cross-examination, it

(Testimony of Henry Jinichi Tsumoto.)

is almost ten o'clock, and I will take a short recess.

(A short recess was taken at 10:00 a.m.)

After Recess. [29]

The Court: Cross-examination?

### Cross-Examination

By Mr. Gross:

Q. Mr. Tsumoto, what is your relation to the Nii family again?

A. Nii, Nii's daughter is my wife, was before, the first wife is Nii's daughter.

Q. You mean Shoso Nii would then be your brother-in-law?

A. No. Shoso Nii is my wife's sister's brother.

Q. Your wife——

The Court: The first wife was the Plaintiff's sister.

Q. So at one time Shoso Nii was your brother-in-law, is that correct? A. Yes.

Q. How long have you known the Nii family?

A. A long time.

Q. You are good friends, aren't you?

A. Yes.

Q. When did you first hear about this law suit?

A. What is that?

Q. When did you first hear about this law suit?

A. I can't understand what you mean that.

Q. Your answer is you don't understand the question, is that it? [30] A. Yes.



(Testimony of Henry Jinichi Tsumoto.)

Q. Would you like to have the question repeated in Japanese?      A. Yes.

The Court: It will not be allowed.

Mr. Gross: I submit, if the Court please, that the question does not require any high degree of comprehension. I'd like the Court to instruct the witness to answer the question.

The Court: Repeat the question to the witness.

(The reporter read the last question.)

The Court: Do you understand that question?

The Witness: No.

The Court: What is it about the question that you don't understand, is it the words "law suit"?

The Witness: Yes.

The Court: It is this case.

The Witness: 'Oh, case.

The Court: Now you understand that? It is this case. Can you answer the question? When did you first hear about this case?

The Witness: Here?

The Court: This case that is on trial now.

The Witness: A couple months ago.

Q. Who told you about the case?

A. Nii told me, Shoso Nii. [31]

Q. Have you discussed this case with Mr. Shiro Kashiwa?

The Court: What is the word that bothers you? Is it "discussed"?

The Witness: Disgusted?

(Testimony of Henry Jinichi Tsumoto.)

The Court: No, not "disgusted"; "discussed," talked to. Please make your question simpler.

Q. Your answer is that you have talked to Mr. Shiro Kashiwa about this case? A. Yes.

Q. When did you first talk to Mr. Shiro Kashiwa about this case? A. A couple months ago.

Q. How often did you talk to Mr. Shiro Kashiwa about this case?

A. That is hard to say because once in a while—see, not every time.

Q. Did you talk to Mr. Shiro Kashiwa about this case two times?

A. About two, three times.

Q. More than three times?

A. About, not more than three.

Q. Not more than three times? A. Yes.

Q. I call your attention to the diagram which you have drawn on the blackboard showing the location of the property [32] and ask you if you ever drew that diagram before?

A. I didn't draw before.

Q. Did Mr. Kashiwa draw that diagram for you?

A. No, I did that.

Q. This is the first time that you ever have drawn a diagram showing that property?

A. Yes, I know the property where is. I remember that.

Q. Then your answer is that this is the first time that you have ever drawn a diagram of the property, is that correct?

A. Yes, yes, is the first time.

(Testimony of Henry Jinichi Tsumoto.)

Q. How many years were you married to the sister of Shoso Nii, Hatsuko?

A. Nineteen, about. I was about 22 years old and then—about ten years, I think, ten or twelve years, I think. I don't remember good. Anyway, she going back in 1931 to Japan.

Q. Were any children born to you as the result of that marriage?

The Court: You understand that one, don't you? Did you have any children by your first wife?

The Witness: No, no children.

The Court: It is neither here nor there, but I have got to find out, to satisfy my own mind, were you divorced from your first wife or did she die?

Mr. Gross: She is still alive, the way I understand it.

The Court: Were you divorced from your first wife or did [33] she die?

The Witness: She not die but divorced.

The Court: All right.

Q. For the purpose of the record, when were you divorced?

A. Divorced in 1936, I think.

Q. In 1936? A. Yes.

Q. You stated on direct examination that you knew the store hours of the Nii store?

A. Yes.

Q. Were you always out there at the store during all of the time that it opened and closed?

A. No, once in a while I went to Waipahu, because next to this my father living, in store, too, so

(Testimony of Henry Jinichi Tsumoto.)

I was all the time there, not all the time but once in a while—see?

Q. By “once in a while” what do you mean?

A. Because father living next to his store, so I went up there, and my father living next to his store. The stores is close.

Q. What is the year in which you married Hatsuko Nii?

A. That, I forget that. I don’t remember that, what year.

Q. Try to give us your best recollection of your first marriage, the year. [34]

A. I was 22 at that time, that is why I—maybe 21 or 22. I no remember good that because matched marriage.

Q. Your answer is that you can’t remember the year in which you were married to Hatsuko, is that your answer?

A. Yes. I don’t know what year. I can’t remember that.

Q. How old was Shoso Nii at the time that you married Hatsuko?

A. Oh, at that time he was very young.

Q. How old, if you know?

A. About seven, eight years, I think.

Q. And how old was Shoso Nii when you and his sister were divorced?

A. That is 1936 I divorced. I don’t know what year, how old he was.

Q. What is your best estimate of Mr. Shoso Nii’s age at the time you divorced his sister?

(Testimony of Henry Jinichi Tsumoto.)

A. The age is—I don't know very sure but about——

Mr. Kashiwa: Your Honor, may the witness be instructed, if he wants to do so, to subtract and add, that he may do so?

The Court: Certainly. He doesn't need a pencil and piece of paper to do that subtracting. He is in the lumber business.

Mr. Kashiwa: Have you got a pencil?

The Witness: I don't know. [35]

The Court: Well, look—you were born in 1899; you said you were about 22 when you married the girl.

The Witness: Yes.

The Court: You were married for about ten years. You said that the son or the brother of the girl you married was seven or eight years old at the time you married the girl. The question is, how old was he when you were divorced?

The Witness: Just roughly he is about 22, I guess, that divorced——

Q. So Shoso Nii was 22 years old when you divorced his sister?

A. That's right. I'm not sure exactly the age, I'm not sure. I don't remember that.

Q. How long have you been in business?

A. Oh, about more than 20 years.

Q. You have been pretty successful at it, have you not? Have you been successful in the business?

The Court (to the witness): Don't look at me all



(Testimony of Henry Jinichi Tsumoto.)

the time. If you don't understand the question, ask him.

A. I don't understand that.

Q. You have to add figures in your business,

A. Oh, sometimes, sometimes not.

Q. You have to add figures in your business, don't you? Do you have to add figures in your business?

A. Yes, that's right. [36]

Q. Would you like to try to inform us, then exactly the dates that you married Hatsuko and when you were divorced and the ages, if you know, of the Plaintiff Shoso Nii when you married his sister and when you divorced his sister?

A. I can't remember that, what year married and what year divorced. The year I know but the divorce is maybe 1936, March, I think. I don't know.

Q. Did she divorce you or did you divorce her?

A. I divorce her.

Q. Where?

A. She living in Japan. I living here. She cannot come back.

Q. Where did you file your divorce in the case?

A. Here.

Q. Over here? A. Yes.

Q. Who was your lawyer?

A. The lawyer is—I forget the name. Kai, I guess—no, not Kai. I forget the name, the lawyer's name, I forget that.

Q. You testified that you knew why Kaneichi Nii went back to Japan. Will you state upon what

(Testimony of Henry Jinichi Tsumoto.)

you base your conclusion that you knew? Do you understand that question?

A. He is going back in 1935.

Q. Why did he go back? [37]

A. That I don't know.

Q. You testified that Kaneichi Nii had property in Japan? A. Yes.

Q. How do you know that?

A. I know, I hear from him all the time and I saw that when I go back at that time.

Q. What did you see?

A. His property, his property and house.

Q. How did you know it was his?

A. He—somebody told me.

Q. Who told you?

A. Japanese people taking care of his property. That's who told me.

Mr. Gross: If the Court please, I at this time would like to move to strike all of the direct testimony of this witness with reference to the ownership of property in Japan by Kaneichi Nii. It is obvious from his cross-examination that it is based purely on hearsay.

The Court: Oh, you are probably right, but it hasn't anything to do with this case, that the man has property in Japan. It is probably just general information picked up.

Mr. Gross: What is the ruling?

The Court: I am going to overrule it.

Q. You stated on direct examination that you sold some [38] old lumber? A. Yes.

(Testimony of Henry Jinichi Tsumoto.)

Q. With which to build those houses out there, is that correct? A. Yes.

Q. When, what year? A. 1932.

Q. What month in 1932?

A. Month, I don't know; I don't remember the month, but I know is 1932.

Q. How did you happen to know 1932 so well?

A. Just—going back to Japan with the wife in 1931, so next year. That's why I remember that.

Q. The year after you went back to Japan you came back here?

A. Came back here, and then I sold that.

Q. You sold what? A. The lumber.

Q. The lumber, is that correct? A. Yes.

Q. Have you examined your business records to find out what year it was that you sold this lumber?

A. No, I no examine.

Q. Do you know what year Mr. Kaneichi Nii bought this property? [39]

A. That I don't know.

Q. Didn't you testify on direct examination that you did know?

A. I don't know that, what year he bought it. Just roughly I know but I don't know exactly when he bought it. It is not mine—see?

The Court: He didn't so testify. He just said he bought it. He didn't say when, according to my notes.

Q. Do you know a man by the name of T. Ota?

A. Yes.

Q. How long have you known him?

(Testimony of Henry Jinichi Tsumoto.)

A. I know him a very long time.

Q. Have you discussed this case with him?

A. That I don't know.

Q. Did you understand the question?

A. You mean talk? No, I didn't talk with him with this case.

The Court: Did not?

The Witness: Not.

Q. Do you know a gentleman by the name of Mikami? A. What is that?

Q. Do you know a man by the name of Mikami?

A. Mikami?

Q. Yes. A. Which Mikami? [40]

Q. Katsutoshi Mikami. A. Yes.

Q. How long have you known him?

A. A long time.

Q. He was a member of the family, too, wasn't he? A. Yes.

Q. Do you know him very well? A. Yes.

Q. Did he know anything about this property?

A. I don't know that. Maybe he know.

Q. When is the last time that you talked to Mr. Shiro Kashiwa about this case?

A. Last time just today.

Q. What did he tell you?

A. He didn't say anything, just when we come in court, that's all.

Q. When was the time before today that you talked with Mr. Shiro Kashiwa about this case?

A. Yesterday. No, I mean Saturday.

Q. What did he say at that time?

(Testimony of Henry Jinichi Tsumoto.)

A. He said the court opens Monday so go up there, that's all.

Q. And when was the time before last Saturday that you talked to Mr. Shiro Kashiwa about this case?

A. That we don't talk. Just—— [41]

Q. Would you answer that question, please?

The Court: Complete your answer or answer the question again.

A. You mean just the last time?

The Court: No, the question was, when was the time before last Saturday?

A. That, I don't remember that. I don't remember that.

Q. Where did you talk to him?

The Court: Which time?

Q. At the time before last Saturday?

A. He telephone to me that the case open Monday. That's all. And then I didn't go to his office before that time.

Q. Have you ever been to Mr. Shiro Kashiwa's office?

A. In different case, different things, I ask something, but not this case.

Q. Was Mr. Shiro Kashiwa your attorney?

A. Yes.

Q. He represents you in other matters, is that correct?

A. Yes.

Mr. Gross: That's all.

The Court: Redirect?

#### Redirect Examination

By Mr. Kashiwa:

Q. You said you went to Japan, took your wife



(Testimony of Henry Jinichi Tsumoto.)

back there in 1931. How long were you in Japan?

A. Two months.

Q. And you came back to Hawaii?

A. Yes.

Q. That was in 1931? A. Yes.

Q. Do you know what day Shoso was born, the day and year?

A. I don't know good but the year is 1915, January 3rd. I know is the date exactly—

Q. Is that January 3rd?

A. Yes, Shoso Nii is the same.

Q. Why did you take your wife back to Japan?

A. She was sick all that time.

Q. What kind of illness?

A. All kinds sick but no good weather here in this country.

Mr. Gross: Sorry, I didn't get that.

The Court: The weather in this country was no good for her.

Mr. Kashiwa: No further questions.

The Court: All right. Any further questions? You are excused.

(Witness excused.)

The Court: Next witness.

Mr. Kashiwa: Your Honor, at this time there is a deposition [43] to be filed. (Showing a sealed envelope.)

The Court: The Clerk may break the seal. (Clerk breaks seal and opens envelope.) This is the deposition of the father taken in Japan before an American Consul in a large sealed envelope addressed to

the Clerk. It contains a smaller envelope. Now, the big one has been opened. And the title of the case appears on the front and it is addressed as Deposition of Kaneichi Nii taken before Jack J. H. Oldham, Vice Consul of the United States of America in Kobe, Japan. And it is to the Clerk of the United States District Court for the Territory of Hawaii. And on the back it is sealed and it states "Depositions taken before me and sealed up, addressed, and transmitted by me, being deposited in the APO 317, Kobe, Japan, this 19th day of October, 1948. Jack J. H. Oldham, Vice Consul of the United States of America in and for Kobe, Japan, acting as Commissioner." You may open that. (Clerk opens smaller envelope.) From it you take some papers, legal size; one is the commission and the other is the deposition of the father and his answers to the interrogatories propounded. I notice the father's signature and fingerprint on each page, as well as the signature of the interpreter. I will return them or hand them over, rather, to the parties—at the end there is the usual Consular certificate.

Mr. Kashiwa: Will the Clerk read the questions and answers? [44]

The Court: No. You read, one of you read the questions and the other one read the answers, and the reporter can get them.

Mr. Gross: If the Court please, may I at this time examine it?

The Court: Both of you.

Mr. Gross: Before we proceed.

The Court: Certainly. Examine it only as to form now. You will be concerned with the answers to the

questions later perhaps. I would suggest that one attorney read the questions and the other the answers so it can get into the record properly. Which do you want to read, Mr. Kashiwa?

Mr. Kashiwa: May I just look through this? I have never done this. That is, I read the questions and counsel read the answers?

The Court: Either way.

Mr. Gross: You read the questions and I will read the answers. I think it will simplify it.

Mr. Kashiwa: It is stipulated that I read the questions and counsel, Mr. Gross, read the answers.

The Court: Read the whole deposition from the beginning.

Mr. Kashiwa: "Deposition of Kaneichi Nii Taken on Behalf of Plaintiff.

"The Foreign Service of the United States of America, Japan, City of Kobe, American Consular Service. [45]

"Kaneichi Nii, of 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, residing more than one hundred miles from the place where the trial of this action will occur, a witness called on behalf of the plaintiff herein, being duly cautioned and sworn to testify the whole truth, and being carefully examined, deposes and says as follows:

"It appearing that the witness, Kaneichi Nii, could not understand the English language, and did well understand the Japanese language, One Morishige Hirayama, who also well understands said Japanese language, was employer as interpreter and was sworn as follows: 'You do solemnly swear that you know the English and Japanese languages and

that you will truly and impartially interpret the answers of the said Kaneichi Nii thereto, out of the Japanese language into the English language.' and said Morishige Hirayama interpreted accordingly."

The Court: It doesn't say anything about translating the English questions. It is a peculiar interpreter's oath. Go ahead.

Mr. Kashiwa: (Continuing):

"In the United States District Court  
For the Territory of Hawaii

Civil No. 837

SHOSO NII,

Plaintiff,

vs.

TOM C. CLARK, Attorney General [46] as Successor to the Alien Property Custodian,

Defendant.

"INTERROGATORIES TO BE PROPOUNDED  
TO KANEICHI NII

"1. Q. What is your name?"

Mr. Gross: At this time I want to object to the entire deposition on the grounds that the certification does not state that the questions were translated from English into Japanese to the witness and that his answers were translated from Japanese into English, or that it appears that the interpreter was an unbiased or impartial individual.

Mr. Kashiwa: That is not all of this. On the next page the questions are——

The Court: I will reserve ruling on that until we come to the end.

Mr. Kashiwa: Your Honor, it does show that the questions were asked by another party.

The Court: Oh.

Mr. Kashiwa: I will read that, your Honor, subsequently.

“It appearing that the witness Kaneichi Nii, could not read the English language, and did well understand the Japanese language, One Florence Nii, who well reads the English language, and who also well understands the Japanese language, was employed to translate the written interrogatories propounded to Kaneichi Nii, and the answers to said interrogatories and cross-interrogatories under oath, which had been reduced to [47] writing, for the examination of the witness, and was sworn as follows: ‘You do solemnly swear that you know and read the English and Japanese languages and that you will truly and impartially translate the oath and interrogatories that have been administered to Kaneichi Nii, the witness that has been examined, out of the English language into the Japanese language, such that the witness may examine same and acknowledge same as his true and correct answers,’ and said Florence Nii translated accordingly, and the said Kaneichi Nii, acknowledged the answers, as reduced to writing, as his true and correct answers.”

The Court: Very well. It appears to be an approved system now. Go ahead.

(Mr. Kashiwa read the questions and Mr. Gross read the answers of the deposition as follows:)



"1. Q. What is your name?

A. Kaneichi Nii.

"2. Q. Where do you reside?

A. 1/942 Kono-mura, Saiki-gun, Hiroshima, Japan.

"3. Q. Are you the father of Shoso Nii who now resides at Waipahu, Oahu, Territory of Hawaii, United States of America? A. Yes.

"4. Q. How old are you now? [48]

A. 71 (Seventy-one) years old.

"5. Q. At what age did you go to Hawaii for the first time?

A. 30 (Thirty) years of age.

"6. Q. How many years did you spend in Hawaii?

A. 26 (Twenty-six) years, but during that time I returned to Japan twice.

"7. Q. When did you last come back from Hawaii to Japan? A. May, 1935.

"8. Q. At the time you last came back from Hawaii to Japan how many children did you have?

A. 3 (Three), 1 (One) son and 2 (Two) daughters.

"9. Q. Will you name your children who are now living and give their present addresses?

A. Shoso Nii—Waipahu, Hawaii. Hatsuko Kodama—Kono-mura, Saiki-gun, Hiroshima-ken, Japan. Florence Nii—CCD, District No. 2, APO 25, c/o P.M., San Francisco, Cal. (Osaka, Japan)."

The Court: What is all that?

Mr. Kashiwa: That is the military address.

Mr. Gross: Military address.

(Continuation.)

“10. Q. When you last came back from Hawaii [49] to Japan, did you transfer the Nii Store to your son Shoso Nii?”

Mr. Gross: Now, I am going to object to the answer of that question on the grounds that the answer here is contrary to the record. It calls for a conclusion of the witness and it is irrelevant.

The Court: Overruled.

(Continuation.)

“A. Yes.

“11. Q. If you did transfer the store, did you sign a bill of sale?”

Mr. Gross: I object to the next answer on the same grounds. I object to the answer to the next question.

The Court: Let me get the question again.

“11. Q. If you did transfer the store, did you sign a bill of sale?”

Mr. Gross: There is a bill of sale in the record here, and it is a leading question.

The Court: Overruled.

“A. Verbally transferred—I did not make any document.

“12. Q. Just prior to your last departure from Hawaii to Japan, did you own any real properties in Hawaii?”

Mr. Gross: I object to that question on the grounds that it is a leading question. [50]

The Court: Overruled.

“A. Yes, land, about  $\frac{3}{4}$  (Three-quarters) of an acre.

“13. Q. What did you do with all of your real

properties in Hawaii when you last left Hawaii for Japan?"

Mr. Gross: I am going to object to the next question on the grounds that it calls for the conclusion of the witness.

The Court: What he did with his property before leaving for Japan?

Mr. Gross: Yes. And that it is irrelevant.

The Court: Overruled.

"A. After returning to Japan, I made a power of attorney to Shoso Nii at the American Consulate in Kobe about December, 1935, to dispose of my properties in Hawaii.

"14. Q. When you last returned to Japan from Hawaii, did you have properties in Japan?"

Mr. Gross: I am going to object to that question on the grounds that it calls for a conclusion of the witness and that that is not the best evidence of his ownership of property there.

The Court: Well, the last objection may be technical a bit but I am going to overrule it.

"A. Yes.

"15. Q. At that time about how much was such property in Japan together with what you brought back from [51] Hawaii on your last trip worth in Japanese yen?"

Mr. Gross: I will object to that on the grounds that it is irrelevant.

The Court: What is the relevancy?

Mr. Kashiwa: Your Honor, our contention is that there was a gift made. Now, nobody who is destitute would make a gift. But here he had sufficient property

in Japan to take care of him. The purpose of offering the proof is to show that he had plenty to live on.

The Court: I have a hazy recollection that previously that has been conceded. My recollection is that some time during the many arguments we have had that it had been conceded. Isn't that right?

Mr. Gross: What has been conceded?

The Court: That he had sufficient property in Japan.

Mr. Gross: That has not.

The Court: It has not?

Mr. Gross: No.

The Court: If I did hear it, it was by way of argument?

Mr. Gross: Yes.

The Court: I am going to allow the answer to the question.

"A. About 100,000 (one hundred thousand) yen, 1935 valuation.

"16. Q. Was that sufficient to comfortably take [52] care of you and your wife for the rest of your life and your wife's life?"

Mr. Gross: I object to that question on the ground that it is irrelevant and it calls—it is a question which the witness cannot properly answer.

The Court: Well, yes.

Mr. Gross: It calls for——

The Court: ——his conjecture or opinion as of that date.

Mr. Gross: It is a conjectural statement.

The Court: However, it may reflect on the state of mind. If it is clear that the statement relates to

his opinion as of the date he went there, not his opinion today.

Mr. Kashiwa: I will read the prior question and answer.

The Court: Perhaps constructing them together you may tie it in.

Mr. Kashiwa: I will read the prior question, question 14.

“14. Q. When you last returned to Japan from Hawaii, did you have properties in Japan?”

A. Yes.

“15. Q. At that time about how much was such property in Japan together with what you brought back from Hawaii on your last trip worth in Japanese yen?”

A. About 100,000 (one hundred thousand) yen, 1935 valuation. [53]

“16. Q. Was that sufficient to comfortably take care of you and your wife for the rest of your life and your wife’s life?”

The Court: I will take it that he means as of that date. The question may be answered.

“A. Yes. Sufficient.

“17. Q. When you last left Hawaii for Japan was your daughter Hatsuko ill? A. Yes.”

Mr. Gross: I repeat that I consider that irrelevant and I’d like to preserve the objection. The answer to the question is “Yes”.

“18. Q. Where was Satsuko living at that time?”

Mr. Gross: Same objection, as irrelevant.

The Court: Same ruling.

“A. In my house, Kono-mura, Saiki-gun, Hiroshima Ken, Japan.”



Mr. Kashiwa: Certified by the Consul.

The Court: What is the page you just flipped?

Mr. Gross: That's the one we just read before, stating the method.

Mr. Kashiwa: U. S. District Court of the Territory of Hawaii, Shoso Nii, Plaintiff, versus Tom Clark, Defendant, Civil No. 837.

The Court: What is that coming up now? [54]

Mr. Kashiwa: The certificate.

The Court: Oh.

Mr. Kashiwa: Certificate by Consul of the United States of America, Foreign Service of the United States of America. I will read this.

“In the United States District Court  
For the Territory of Hawaii

Civil No. 837

“SHOSO NII,

Plaintiff,

vs.

“TOM C. CLARK, Attorney General as Successor  
to the Alien Property Custodian,

Defendant.

“CERTIFICATE BY CONSUL OF THE  
UNITED STATES OF AMERICA

“The Foreign Service of the United States of  
America,  
Japan, City of Kobe,  
American Consular Service—ss.

“I hereby certify that on the 14th day of October,  
1948, before me, Vice Consul of the United States

of America, at my office, 24 Kyo-machi, Kobe, Japan, personally appeared, pursuant to the notice hereto annexed, between the hours of 9:00 o'clock a.m. and 11:00 o'clock a.m., Kaneichi Nii, the witness named in said notice, and the said Kaneichi Nii being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as in [55] the foregoing annexed deposition set out.

"I further certify that said deposition was begun on the 14th day of October, 1948, and continued from day to day until the 14th day of October, 1948, when same was completed.

"I further certify that the said deposition was then and there reduced to typewriting by me, and was, after it had been reduced to typewriting, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

"I further certify that the reason why the said deposition was taken was that the said witness resides at 125 Kono Mura, Saiki Gun, Hiroshima Ken, Japan, more than one hundred miles from Honolulu, Territory of Hawaii, the place where this cause is to be tried.

"I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

"I further certify that the fee for taking said deposition, \$10.00, has been paid to me by Florence Nii on behalf of the plaintiff, and the same is just and reasonable.

“Witness my hand and official seal at American Consular Service, Kobe, Japan, this 18th day of October, 1948.

/s/ JACK J. H. OLDHAM,  
Vice Consul of the United States [56] of America  
in and for Kobe, Japan.

Service No. 2427; fee \$10.00; Item No. 32.”

And it is stamped “American Consular Service.”

There is a seal on this one.

The Court: In a pretty red ribbon.

Mr. Kashiwa: This is the notice—

“American Consular Service  
Tokyo Bank Building  
(South Entrance)  
24 Kyomachi, Kobe

September 30, 1948

“Mr. Kaneichi Nii  
125 Kono-mura, Saiki-gun  
Hiroshima-ken

“Sir:

“This office is in receipt of a commission to take a deposition from you, dated May 21, 1948, in a matter pending before the United States District Court, District of Hawaii, Honolulu, T. H., and entitled ‘Civil No. 837, Shoso Nii vs. Tom C. Clark, et cetera.’

“In order that this deposition may be taken, your presence will be required in Kobe. It is suggested

that you appear during the second week in October at this office, which is open from 8:00 a.m. until 4:30 p.m., Mondays through Fridays of each week. Please advise by return mail the date on which you expect to appear for the purpose of making this deposition.

“Very truly yours,

/s/ DOUGLAS JENKINS, JR.,  
American Consul.”

The Court: Very well.

Mr. Gross: Now I'd like to make another and further objection to the entire deposition on the grounds that it appears from the deposition itself that the witness was interrogated by Florence Nii who was his daughter.

The Court: How do you know that?

Mr. Gross: It appears from the deposition.

The Court: Let's see that.

Mr. Gross: His answer to the question at the bottom of page one as to who his children were.

The Court: How do you know it is the same Florence Nii?

Mr. Gross: Because the certificate shows it.

Mr. Kashiwa: We admit that.

The Court: What difference does it make if she took an oath to do the interpreting correctly?

Mr. Gross: The questions are being propounded by the man's own daughter to him from English into Japanese, where innuendos of translation may be very important as we have had it in this case.

The Court: Well, granted, but she has given the

American Consul her oath that she did this translating properly. If you wish to impeach her, you will have to bring forth further [58] evidence to do it. But as it stands, I will not entertain your objection.

Mr. Gross: The objection will be overruled?

The Court: Yes.

Mr. Kashiwa: Your Honor, this commission is the record of this court——

The Court: Right.

Mr. Kashiwa: And I offer the entire deposition in the record.

The Court: It has already been read into the record, but to illustrate as a means of double checking the record, it may be marked by the clerk as an exhibit.

The Clerk: Plaintiff's Exhibit "B".

(The documents referred to were received in evidence as Plaintiff's Exhibit "B".)

The Court: There were no cross-interrogatories propounded to this witness, so there are none available to be read. It is eleven o'clock and I will take the second recess.

Mr. Gross: Might we ask the Court what its intention is, whether we are going through the afternoon?

The Court: Yes. And, therefore, we will stop at noon for our noon recess.

(A short recess was taken at 11:00 a.m.)



## After Recess

(Jack Nakagawa was sworn to act as interpreter.) [59]

EISUKE IKINAGA,

a witness on behalf of the plaintiff, being duly sworn through the interpreter, testified as follows:

## Direct Examination

The Court: I want to first make sure that this man doesn't speak English. And you (to the interpreter) stay out of the picture until I am satisfied that he doesn't speak English. Will you please state your name, age, residence, occupation and citizenship? Wait a minute. He just sat there. He didn't indicate one way or another. Don't you speak English?

The Witness: (In English.) I speak some but I can't understand.

The Court: You would rather testify through an interpreter?

The Court: All right. (Through the interpreter.) Name, age, residence, occupation and citizenship?

The Witness: Eisuke Ikinaga.

Mr. Gross: Excuse me, isn't that Akini?

Mr. Kashiwa: I-k-e-n-a-g-a.

The Witness: I-k-i. I am 62 years old.

The Court: Residence?

The Witness: I live at Waipahu.

The Court: Occupation?

The Witness: I have a business of auto repairing and [60] selling autos.

The Court: And citizenship?

(Testimony of Eisuke Ikinaga.)

The Witness: I am a subject of Japan.

The Court: Take the witness.

By Mr. Kashiwa:

Q. How long have you resided in Waipahu?

A. Approximately 35 years.

Q. Continuously? A. Yes, continuously.

Q. What is the name of your business?

A. Waipahu Garage, Limited.

Q. During your stay in Waipahu for 35 years, did you know Kaneichi Nii? A. Yes.

Q. In what business was he in?

A. At first he had a grocery store. Then he went to Japan. He came back and is now engaged in his present business.

Q. Mr. Interpreter, I don't believe you got that right. Now engaged in.

A. In 1921 or '22 he sold his business and went back to Japan. And I don't know exactly when he came back, but after he came back he was engaged in the present business.

Q. Where is Kaneichi Nii now?

A. He is in Japan now. [61]

Q. Since when has he been in Japan?

A. I cannot recall exactly but I think it was about 1935 or '36.

Q. Do you know Shoso Nii? A. Yes.

Q. Is he in this courtroom?

A. Yes. He is sitting over there.

Q. Indicating the plaintiff sitting next to me.

The Court: Yes.

Q. How long have you known Shoso Nii?

(Testimony of Eisuke Ikinaga.)

A. He was born in Waipahu and I had known him ever since his birth.

Q. Did you know Shoso's mother?

A. Yes.

Q. Was Kaneichi Nii in any way connected with your business?

Mr. Gross: Objected to as a leading question.

The Court: Sustained.

Q. Did you have any business dealings with Mr. Kaneichi Nii?

A. Yes. He and I started, organized the Waipahu Garage.

Q. It was back when?

Mr. Gross: Objected to on the grounds that it is a leading question.

The Court: "When"? [62]

Mr. Gross: I withdraw the objection.

A. I cannot remember the exact date, but it was some time during the latter part of 1916 or the early part of 1917.

Q. You testified that Mr. Nii went back to Japan, Mr. Kaneichi Nii went back to Japan in 1935. At that time did you know what properties he had?

Mr. Gross: I object to this, to that question, unless counsel can by some other question show that this man was in a position to know what properties a total stranger had. I don't believe this is the best evidence of what properties Mr. Kaneichi Nii had, and I object to it on the grounds it is hearsay.

Mr. Kashiwa: Your Honor, I just asked him whether he knows, yes or no.

Mr. Gross: I object to the question, does he know?

(Testimony of Eisuke Ikinaga.)

The Court: All right.

A. Yes, I know.

Q. How far was your garage from the Kaneichi store?

Mr. Gross: Objected to as being irrelevant.

The Court: What is the point, to find out what the store hours were?

Mr. Kashiwa: No, your Honor, he says he knows, and I want to substantiate that. He is very close, so that they saw each other quite often. [63]

The Court: All right. Go ahead.

Mr. Kashiwa: I offer to prove that, your Honor.

A. About 50 or 60 feet away.

Q. Was it on the same street?           A. Yes.

Q. Now, prior to Mr. Kaneichi Nii's departure to Japan, how often did you see him?

A. Inasmuch as we were friends and we lived in the same neighborhood, I used to see him quite frequently, not every day but quite frequently.

Q. Now, prior to Mr. Kaneichi Nii's departure to Japan, did you have any conversation with him regarding his properties here?

A. He did not tell me in detail about his property but the only thing that he said——

Mr. Gross: I object to anything further than that, if he had any conversation. Now, the witness testified that he did not tell him the details of selling his property. This is all a conversation between this witness and the man who is not before the court. And I'd like to make a further objection that it is hearsay and not the best evidence.

Mr. Kashiwa: Your Honor, this is certainly not

(Testimony of Eisuke Ikinaga.)

hearsay. The property in question they contend was owned by Kaneichi Nii, and any statements made by him, statements which in any way are against his interests, or any person who is a [64] prior owner of the property making statements with relation to that property at that time, your Honor, I contend is not hearsay. I am talking with the very person through whom they claim title.

The Court: Who is not a party to this action. This isn't an admission against interest. His father is not a party to this action.

Mr. Kashiwa: Yes, your Honor, but a grantor—this is not a case of a grantor-grantee. While the grantor is the owner of the land, if he makes any statement with relation to the property——

The Court: Not any; some statement.

Mr. Kashiwa: Yes. That is a statement that is admissible and is an exception to the hearsay rule.

The Court: As to boundaries of the property, and so forth, yes, but apparently what you are asking this man to testify to is what the father of this plaintiff told this man in general what he was going to do with his property when he went to Japan. Isn't that what you are driving at? Isn't that what you expect this witness to testify to?

Mr. Kashiwa: Yes, your Honor. Now, I submit that that is admissible in evidence, your Honor. He is a prior holder of the interest, the very interest they claimed they vested. And his statements are admissible.

Mr. Gross: Excuse me, Mr. Kashiwa, who is the prior [65] holder?



(Testimony of Eisuke Ikinaga.)

Mr. Kashiwa: Kaneichi Nii.

Mr. Gross: I thought you meant this witness. He was not only a prior holder; he was a direct holder of the title at the time of vesting.

The Court: You are both talking about the same thing?

Mr. Gross: That's right.

Mr. Kashiwa: I don't claim that he was.

The Court: In other words, your theory is that since the Government claims the father is the owner of the property that any statements the father may have made with respect to what he was going to do with the property is admissible as an exception to the hearsay rule under the theory that anything a landowner says about his property is admissible?

Mr. Kashiwa: Yes, your Honor.

The Court: I can't see that. The cases you point out of the grantor-grantee making general statements as to boundaries, and so forth, they do come under an exception to the hearsay rule. But I can't conceive of any exception to the hearsay rule that would allow a third person to testify in this particular kind of a case as to what a person said that he was going to do with the property.

Mr. Kashiwa: A third person—you mean Kaneichi Nii?

The Court: The man who the plaintiff here claims to be the grantor of that which he is claiming. [66]

Mr. Kashiwa: Your Honor, I intend to prove—this is an offer of proof—I intend to prove that the witness—not the witness—that Kaneichi Nii said

(Testimony of Eisuke Ikinaga.)

that he was going to give that property, the property in dispute in this case, to his son.

Mr. Gross: It is our contention that such a statement would be irrelevant. A man makes a lot of statements in the course of what he intends to do, and he changes his mind frequently.

Mr. Kashiwa: And we will follow that with proof, that there was a gift of that particular parcel made.

The Court: Well, your whole theory of the case is that it is a gift?

Mr. Kashiwa: Yes.

The Court: If you are endeavoring to show the state of mind of the alleged donor, I can't see anything to the objection of having this witness indicate what the donor indicated to him in a conversation as to what his intentions were. Now, what his intentions were and what he actually did may be two different things. But there is a difference——

Mr. Kashiwa: I will withdraw the question, your Honor. And may that last answer be stricken?

The Court: All right. It may go out.

Q. Now, do you know that piece of property Mr. Kaneichi Nii bought from Mr. Ota situated at Waipahu near the Waipahu River while Mr. Kaneichi Nii was here? [67]           A. Yes, I do.

Q. Prior to Mr. Kaneichi Nii's departure to Japan in 1935 did he express his intentions as to what he was going to do with that property to you?

Mr. Gross: This is objected to on the grounds that it is irrelevant. A man's expression of intention to people who are not parties to the lawsuit is certainly not only irrelevant but it is not the best evi-

(Testimony of Eisuke Ikinaga.)

dence. It has no bearing on the issues here and it is a violation of the hearsay rule. Mr. Kashiwa is now going to try to come in through the back door when the Court won't let him come in through the front door. That is my feeling about it. And in addition to that, the question is vague and indefinite and uncertain. He hasn't fixed the time or the place or the hour. I think that the Government is entitled to be able to cross-examine this man if he should make such a statement as that. We don't know when this statement was made, who was present, or anything about it.

Mr. Kashiwa: Those matters will be developed later, your Honor.

The Court: You are obviously following up the suggestion that I made that the question in the state of mind of the donor may become of importance, but here you are endeavoring to get the recollection of his state of mind by virtue of what he may have said to this man at some time in the indefinite [68] past. Assuming for the moment that it is definite——

Mr. Kashiwa: Read that question back.

(The reporter read the last question.)

The Court: I don't think so. It seems to me to be hearsay. I am going to sustain the objection.

Q. Prior to Mr. Kaneichi Nii's departure for Japan in 1935 did you know what Mr. Kaneichi Nii intended to do with the property in question in this case?

Mr. Gross: Objected to on the grounds of incompetency. This witness is certainly not competent

(Testimony of Eisuke Ikinaga.)

to testify as to the state of mind of Mr. Kaneichi Nii who is now in Japan. Counsel took interrogatories from Mr. Nii in Japan, and if he wished to do so he could have examined Mr. Nii himself personally with reference to what his state of mind was. I certainly can't see how a third party, a person not a party to the lawsuit who has no financial interest in it, and who is, let us say, either a business or a social acquaintance, can testify as to what the state of mind of the Court may have been or the state of mind of counsel may have been, or any other person.

Mr. Kashiwa: I am just asking for an answer, yes or no; did he know or did he not know?

Mr. Gross: And I submit that he is incompetent to testify as to what the state of mind of a person now in Japan was in 1935. [69]

The Court: I think the objection is good. It is sustained.

Q. Do you know whether or not Mr. Shoso Nii went to high school?

A. I don't think he did.

Q. Where did he work, that is, after he finished his elementary school?

Mr. Gross: Objected to on the grounds that this is a double question. He assumes that he worked after he finished elementary school.

The Court: Sustained. It assumes that he also went to elementary school. Let's take it by stages.

Q. Did Shoso Nii go to Waipahu elementary school? A. Yes.

Q. Did he graduate from that?

(Testimony of Eisuke Ikinaga.)

A. I think he did.

Q. Now, what was the highest grade at Waipahu elementary school at that time?

A. Eighth grade.

Q. What did Shoso Nii do after that?

A. He was helping his father at his store.

Q. Now, on or about that time did the Niis buy any automobile from you?

Mr. Gross: Objected to as irrelevant, if the Court please. I don't think it makes any difference whether he says on or [70] about that time. I object to the form of the question. It is vague, indefinite, uncertain, and I object to the substance of the question on the grounds that it is immaterial whether the Niis—there are any number of Niis—he doesn't state what Nii bought what automobile and when. And on the further grounds—and I think it is a basic objection—that I'd like to continue with reference to all of this testimony, that it is irrelevant to the issues before the Court.

The Court: Well, having heard counsel's opening statement, he may be able to tie it up. But I do think that it could be more specific as to who you are talking about. The question is objectionable as not being definite enough.

Q. All right. After Shoso graduated from the elementary school, did Mr. Kaneichi Nii buy an automobile from you?

A. Yes. He said that he was going to get——

Mr. Gross: Just a minute. I object to what he said.

The Court: Mr. Interpreter, just let him answer



(Testimony of Eisuke Ikinaga.)

the question. Did he or did he not buy an automobile from this witness at about the time mentioned?

The Interpreter: The answer was "Yes".

Q. What kind of car was it?

A. It was a Chrysler.

Q. And whose name was it put——

Mr. Gross: Just a minute. I object. May the record show my objections to the relevancy of this entire line [71] of testimony will be taken to all of these questions having to do with anything——

The Court: Your objection of relevancy runs to the line and all this is admitted conditionally on being connected up.

Mr. Gross: And if counsel is endeavoring to prove by this question a question of title to an automobile, I want to submit the further objection that this is not the best evidence of title to the automobile. A certified copy of the record and the proper official will show in whose name title of the automobile was taken.

The Court: I think that is probably true. But I am not going to go off on that detail at the moment. If it becomes material, then I will.

A. I do not recollect clearly as to whose name it was bought under.

Q. Now, when Mr. Kaneichi Nii left for Japan in 1945——

The Court: '45?

Q. ——'35, did he tell you what he had done with this property which he had bought from Mr. Ota?

Mr. Gross: Objected to for the same reasons that I have previously expressed with reference to——

(Testimony of Eisuke Ikinaga.)

The Court: Sustained.

Mr. Kashiwa: Your Honor, I will offer to prove that, by this question, that there will be proof produced that the owner of the property at that time made a gift of the property [72] to Shoso Nii. Now, that is very material in this case, your Honor.

The Court: The facts are important. But what this witness could tell us what the man said he was going to do is not important. What he did do is important.

Mr. Kashiwa: That is the question. That is why I am reframing, coming back to the same thing.

The Court: Read the question again.

(The reporter read the last question.)

The Court: All right. You are correct on the question so far as what he did do being important. But what he did do as a fact which can stand on its own two feet as distinguished from this man telling us what he, what his father said he did do, what was done as a fact—what are those facts, not what this man heard the father say he did do? You go ahead and complete your offer.

Mr. Kashiwa: Your Honor, my position is this, that the A.P.C. now claim that they hold—they claim it through Nii—a vesting order. Now, they still claim that Kaneichi Nii to the date of the vesting order owned that property. Now, in that period of time—if there is any statement made by him showing that he does not have the title, your Honor, he does not own the land, I think that is admissible. It certainly is most material for a person who the other side

(Testimony of Eisuke Ikinaga.)

assumes that he owns the land if the person tells somebody that he doesn't [73] own the land, and certainly that testimony is admissible, your Honor.

The Court: It would be if the father were here. The father is not the plaintiff. Your man is contending that he owns the property, and it is incumbent upon him to show on what theory he does own the property.

Mr. Kashiwa: Your Honor, it is almost 12 o'clock. I am sure on this point—this is an exception to the hearsay rule, where an owner of a piece of property makes a statement——

The Court: Declaration against interest.

Mr. Kashiwa: Yes, your Honor.

The Court: And you will find in those cases that the party, the person who so declares, is the party to the lawsuit.

Mr. Kashiwa: Then why talk about hearsay? Why talk about exception to the hearsay rule? Because if the party is a party to the suit, it is not hearsay at all. There is no question. Why do the courts discuss this thing? It is because the party is not a party to the lawsuit. But yet he made that statement. That is why we talk about hearsay. If the party is a party to this suit, my gosh, we won't have to even talk about hearsay because any statement by any party to the suit is not hearsay.

The Court: I think you are right.

Mr. Gross: If the Court please, this is not a question [74] by which Mr. Kashiwa is endeavoring to prove that a statement was made. If that were what he was trying to prove and with proper ques-

(Testimony of Eisuke Ikinaga.)

tions would fix the time and the place and the date and who was present, I would agree that such statement might be admitted for what it was worth.

The Court: Statement by the father as to what he did.

Mr. Gross: No, what the father told this man at a certain time and place, so that it won't be vague and indefinite and uncertain as it is now. But that is not what Mr. Kashiwa is endeavoring to prove. He is trying to prove the ultimate fact, which is quite a different situation. And the Court's initial ruling on this question of hearsay I am sure is sound. It is pretty close to adjournment time, and I am perfectly willing during the lunch hour to endeavor to get cases, if the Court has any serious doubt as to the soundness of this ruling.

Mr. Kashiwa: I am calling for the very thing I am asking in that question. It is a statement.

The Court: Well, you go back to the question. I sustained the objection to your question. Now you are making an offer of proof and keep going back to the question. Give me a clear-cut offer of what you intend to prove by this witness.

Mr. Kashiwa: That Kaneichi Nii told him that everything he has in Hawaii he has given to his son, including this real property, and that he is going back to Japan. And Mr. and Mrs. Kaneichi Nii—I mean Shoso Nii—are still young people, [75] so please look after them when they need any help.

The Court: All right. Assuming that the witness would so testify, what would it prove?

(Testimony of Eisuke Ikinaga.)

Mr. Kashiwa: That he gave everything, including this real property in dispute, to his son.

Mr. Gross: That is where the issue is drawn.

The Court: That which you just said doesn't tend to prove that.

Mr. Kashiwa: The statement is, your Honor, that Kaneichi Nii gave everything he had in the Territory—Kaneichi said that to this witness—everything he had in Hawaii he gave to his son, so please look after the son.

The Court: Well, you have changed your offer. Your first offer was that the man would testify that father said he is leaving, and now you say he has left.

Mr. Kashiwa: No, no. He is leaving for Japan, that he has turned over everything to the son.

The Court: That isn't what you first said. I will ask you to repeat your offer. Now, what is it you are going to offer by this witness clearly? Don't shift it.

Mr. Kashiwa: I will offer to prove, your Honor, that at Waipahu in the year 1935, before Mr. Kaneichi Nii's departure for Japan—which I will later prove was on or about May, 1935—prior to such departure Kaneichi Nii made a statement to this witness that he is going back to Japan, that he has made, he [76] has transferred, given all of the property to his son, all of what he has in the Territory, including real estate and the store; and that he asked his good friend, the witness here, to look after the young couple, Mr. and Mrs. Shoso Nii.

The Court: All right.

Mr. Gross: I object to that on the grounds that



(Testimony of Eisuke Ikinaga.)

it is not the best evidence among other things, and the objections which I previously raised, and it is a violation of the hearsay rule. If the offer of proof is that he gave everything to his son, then the best evidence that he gave everything to his son is not this unsupported testimony of a conversation between a man who is not before the Court and cannot be cross-examined and who is still alive and whose interrogatories were taken before the Consul in Japan with great trouble and expense and who could have been asked to corroborate this testimony here. The Government has no way of cross-examining this man on this type of testimony.

The Court: Well, very definitely getting over this point that did bother me about parties, which I am now satisfied about, this plaintiff claims the land through this man, the father, and if the father had made a declaration of this sort definitely it would have been against his interest to say that somebody else now owns by reason of the gift that which I formerly claimed to own. The important thing that I want to find out is whether or not in point of fact he has made a gift, [77] not what he told somebody else, not what he told somebody else what he did do. That is the thing that bothers me.

Mr. Kashiwa: Whether he has?

The Court: Well, whatever the property involved is, the fact of the gift is important.

Mr. Kashiwa: I am endeavoring to prove this by evidence of this nature. This is not conclusive but evidence to be considered. It is material to that extent.

(Testimony of Eisuke Ikinaga.)

The Court: The fact that I tell somebody I have made a gift to my daughter, for example, of anything doesn't prove that I have made it.

Mr. Kashiwa: Yes, your Honor, but subsequently I will produce additional testimony, and I offer to prove, your Honor, the transaction between the father and son with the son's understanding. And not only that, but after the father went back, the ownership of this property the son exercised, and that is not by parol but by actual records; that he did everything that an owner of the property is to do, collect that rent, paid the taxes on it in his name, not in the father's name, paid the real property tax, made improvements out there.

The Court: We will get to that later. One thing at a time. I am more interested in this point now. How do you explain that you didn't ask the father about this in his deposition?

Mr. Kashiwa: I did, your Honor, but—let's see the [78] deposition. There is a question——

The Court: He said he made a verbal gift.

Mr. Gross: Only with reference to the store.

The Court: That's right.

Mr. Gross: And the bill of sale of the store is a part of the record here.

The Court: I remember catching that fact as it was read.

Mr. Kashiwa: Your Honor, here it says:

“Q. Just prior to your last departure from Hawaii to Japan, did you own any real properties in Hawaii?

(Testimony of Eisuke Ikinaga.)

“A. Yes, land, about  $\frac{3}{4}$  (Three-quarters) of an acre.”

The Court: Yes.

Mr. Kashiwa: Question No. 13:

“Q. What did you do with all of your real properties in Hawaii when you left Hawaii for Japan?”

The Court: What is the answer?

Mr. Kashiwa: “Answer. After returning to Japan, I made a power of attorney to Shoso Nii at the American Consulate in Kobe about December, 1935, to dispose of my properties in Hawaii.”

The Court: Well, those are the ultimate facts that I am more interested in than what he may have told this witness he did. On the strength of that man's testimony the father, as I recall it—he testified in that deposition that prior [79] to going to Japan he made a verbal gift of the store to the son. Then this question that you read and his answer indicate that as to the real property, at some later date after he got to Japan, he gave the son certain powers of attorney to dispose of the real property. Now, whether the son used those powers of attorney or not I don't know at the moment. But that would be a fact certainly more substantial than having this witness tell me what the man told him he had done, when on the fact of that deposition he hadn't done something.

Mr. Kashiwa: Your Honor, on the face of this deposition—for example, your Honor knows of a fact that there was a bill of sale.

The Court: I seem to recall there was one.

Mr. Kashiwa: This is it. Now, certainly there is

(Testimony of Eisuke Ikinaga.)

something wrong with this witness here—he did make it, and, your Honor, from the very face of the deposition, from the actual physical evidence here in court, which your Honor has considered on a prior motion that that thing is vitally wrong——

The Court: Well, he is your witness. You put him on. You vouched for him.

Mr. Kashiwa: So I am intending to explain this, your Honor, by other evidence. The answer is not very definite what he did with the property. He says he later set a power of attorney——

Mr. Gross: If the Court please, if Mr. Kashiwa is trying [80] to impeach his own witness at this time, I am certainly going to object on the entire line of questioning at this time. He has no right to impeach his own witness.

The Court: Well, I am interested in this offer of proof. We got off on that. But I wanted to know why he hadn't covered the point, why he hadn't the alleged grantor testifying.

Mr. Kashiwa: In other words, I did cover the point but the answer wasn't exactly responsive. I tried to make the questions as comprehensive as possible, but the difficulty in getting a deposition is just what happened in this case.

The Court: Well, it is 12 o'clock. Let me see some of these authorities that you offered. And we will resume at 1:45.

Mr. Gross: If the Court please, I wonder if the Government might impose on the Court's indulgence. Mr. Hoddick has another matter, I believe.

Mr. Hoddick: It is before Judge Metzger at two

(Testimony of Eisuke Ikinaga.)

o'clock. We have a hearing set for trial and review of a sentence. It shouldn't probably take more than a half hour at the outside.

The Court: When was that set?

Mr. Hoddick: At two o'clock.

The Court: When was it set?

The Clerk: Last week, your Honor.

Mr. Hoddick: We filed a motion to set five days ago.

The Court: Can you advance it or is it set for two?

The Clerk: It is set for two, your Honor. There is only one setting for two o'clock, and Judge Metzger had it go on from this morning, a review of a sentence.

Mr. Hoddick: During the lunch hour I might be able to arrange for somebody else to go there in my stead.

The Court: Well, I haven't been thinking so much of that as I have been of the reporter problem. I'd be perfectly willing to excuse you. Small matters take at least a half hour, so that 2:30 or a quarter of three would be the earliest that we could get together on this matter. I think the best thing to do is to continue this until tomorrow morning. What is the situation tomorrow?

The Clerk: There is a hearing and two motions tomorrow morning at ten o'clock, your Honor. Those are pre-trial matters.

The Court: Have you made any effort to get another reporter?

The Clerk: For tomorrow?



(Testimony of Eisuke Ikinaga.)

The Court: For any time where there is a conflict?

The Clerk: There wouldn't be any conflict.

The Court: Why not? You've got a conflict. Well, I am going to continue this case until 1:30, and during the recess of the noon period endeavor to get another reporter for Judge Metzger's division, if you can. And in any event, if it is impossible, I will take a recess at two in order to [82] divide the reporter so that he can be in the other division. But if you are going to have these conflicts continually, as you well know, Mr. Clerk, I am not trying to have you do the impossible but frequently nobody thinks of it in advance and maybe that is the reason we can't get a second reporter as a substitute. Let's see if we can line up a substitute.

(The Court recessed at 12:00 noon.) [83]

#### Afternoon Session

The Court: Very well, gentlemen, I will call the case for the Clerk. It is the same case we had this morning, and the question before the Court is the ruling on the pending offer of proof. What have you to add to the picture, Mr. Kashiwa?

Mr. Kashiwa: I looked at your Honor's book. I think you have the same book as I have.

The Court: I've got two here, one on gifts and one on evidence.

Mr. Kashiwa: Page 516. I have 20, statement of former owner.

(Testimony of Eisuke Ikinaga.)

The Court: Yes.

Mr. Kashiwa: Declaration of the former owner in the nature of an admission against interest—

The Court: Well, I had about reached the same conclusion by a different process of reasoning, however. Your whole theory is one of gift.

Mr. Kashiwa: Yes.

The Court: And we went around in circles this morning about what the father may have said to this witness about his intention to make a gift. And on the question of whether an actual gift has been made or not, subsequent declarations by a donor are admissible as declarations against interest. So that on the gift side I would be inclined to think that if [84] it is shown that the gift has been made, then declarations by the father, if they be such and properly identified as to time and place, and so forth, would be admissible as declarations against interest. On the other hand, with respect to the property, you can reach the same conclusion as indicated by the citation to which you invited my attention, particularly when you realize, as you have claimed,—which I didn't fully appreciate this morning—that the Alien Property Custodian's title, if it has one, is no better than what the father had as of the date of the vesting. So I am going to accept your offer to prove that which you outlined when I last asked you to clearly make your offer and make it specific. So that you may proceed. I think it would be better to restate it. I sustained the objection to the last question. Maybe, in view of my present acceptance

(Testimony of Eisuke Ikinaga.)

of your offer, you might want to go back to that point and start over again. But I think in view of the confusion this morning that it would be highly beneficial to all to start over on this particular point.

Mr. Kashiwa: Now, your Honor, one point there.

The Court: Yes?

Mr. Kashiwa: Your Honor made a differentiation between a statement made, statements made prior to the completion of the gift and after the completion of the gift.

The Court: As to gifts, it is the subsequent declarations that are important. As to the property here, we have a little [85] combination of circumstances, and I am inclined to believe that declarations against interest by one when he owns the property, has reason to speak about it, are binding on one who claims in the chain of title under that. So you may have two different grounds here. I don't know——

Mr. Gross: If the Court please, I'd like to point out that there is one other thing on that exception to the hearsay rule that I believe is accepted, namely, that if it is offered to prove the statement of a witness by another witness, there must be some showing that the witness whose hearsay we are going to let in is unavailable. The record here shows that Mr. Kaneichi Nii is not unavailable, that as late as October, 1948, his testimony was taken before an American Consul in Japan. I think that is a modification of this rule.

The Court: Well, that is perhaps something that

(Testimony of Eisuke Ikinaga.)

we may have to attend to. At the moment all that I would care to say on that point without a clear ruling being made—for there is nothing before the Court—is that I'd be inclined to think that that circumstance might go to the weight rather than to the admissibility.

Mr. Kashiwa: Your Honor, under the statement on former owner, even if the witness is right here we can introduce——

The Court: Well, go ahead.

By Mr. Kashiwa:

Q. Now, prior to May, 1935, when Mr. Kaneichi Nii [86] departed for the Empire of Japan, did you have any conversation with him as to what he did with his properties in Hawaii?

Mr. Gross: Objected to as being leading. I will withdraw the objection.

The Court: All right.

A. Yes, I had.

Q. And what was that?

Mr. Gross: If the Court please, now I am going to object to it unless Counsel will fix the time and place and date and who were present so that it will be possible to——

The Court: If anyone were present.

Mr. Gross: That's right, if anyone were present.

By Mr. Kashiwa:

Q. Was there anyone present at the time of that conversation?      A. I do not remember.

Q. Where was this conversation had?

(Testimony of Eisuke Ikinaga.)

A. After he had definitely decided to return to Japan, he came to me at my garage.

Q. Where was that garage?

A. Waipahu Garage.

Q. With relation to the time Mr. Nii went back to Japan, about how many days or months prior to that was it?

A. I do not recollect exactly but the conversation took place after he had definitely decided to return, and that the [87] baggage and personal belongings were being crated up, which was presumably about three or four days prior to the sailing.

Q. Now, what was the conversation?

A. He told me that he had definitely decided to return to Japan and that all the properties he had in Hawaii he was going to give to Mr. Shoso, his son, and told me that inasmuch as Shoso was a young man for me to look after them as though I were in his place.

Q. Now, aside from that conversation, did you at any time prior to that time, between the day Mr. Ota sold the property to the day he left for Japan, have any other conversation with Mr. Kaneichi Nii with regard to the disposition of his property in Japan?

A. Yes, at another time he told me that he had decided to give everything over to his son and that he talked about signing some papers. I am not very clear as to the details of the conversation.

The Court: Let's go back.

Mr. Kashiwa: Read the last question back.



(Testimony of Eisuke Ikinaga.)

Mr. Gross: I make a motion to strike the whole answer.

The Court: It may go out. Read the question, to the attorney rather than the witness.

(The reporter read the last question.)

Mr. Kashiwa: I will withdraw that question. That answer may be stricken. [88]

Q. Now, aside from that conversation which you referred to which you had when Mr. Kaneichi Nii was making his baggage, preparing to go to Japan, from the time he purchased the T. Ota property up to the time of that conversation, did you have any other conversation with relation to the disposition of property which Kaneichi Nii held here in the Territory of Hawaii?

A. Between the time he had frequently told me that the property was to be for Shoso, and I presumed that Mr. Nii, Kaneichi Nii, had signed some property in relation to turning over the properties to Shoso.

Mr. Gross: I move to strike what he presumed, what the witness presumed.

The Court: It may go out.

Mr. Kashiwa: The last presumption part?

The Court: Yes.

Mr. Kashiwa: Do you want to examine this before I show it to him? (Handing several sheets of paper to Mr. Gross.)

Q. Let me show you this document which purports to be the last will and testament of Kaneichi

(Testimony of Eisuke Ikinaga.)

Nii. Look at the second page of this document and see if your signature is on it?

A. Yes, this is my signature.

Q. Does the signature of Kaneichi Nii appear on it?

Mr. Gross: I wonder if we might have this document [89] identified at this time?

A. Yes, I am positive that is Mr. Nii's signature.

Mr. Kashiwa: Counsel wants this identified. May this be marked for identification?

The Court: Yes. The document may be marked.

The Clerk: Plaintiff's Exhibit No. 1 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 1 for identification.)

Q. Now, after seeing this document, do you recall having signed it?      A. Yes, I have.

Q. On December 17, 1932, when you were residing on Waipahu?      A. Yes.

Q. Now, you said that Kaneichi Nii's signature appears on this document on page 2. There are two signatures written in Japanese. Which signature written in Japanese is Kaneichi Nii's?

Mr. Gross: If the Court please, I object to Counsel examining this witness on a document that hasn't even been offered in evidence yet, at length. If he is trying to lay a foundation, that is one thing, but I gather from what he is going to do is to offer a copy of Kaneichi Nii's last will and testament into evidence.

(Testimony of Eisuke Ikinaga.)

The Court: All the witness was asked to do is to indicate [90] which Japanese signature he has previously identified as the father's signature. The objection is overruled.

A. The one on top here is Mr. Nii's.

Q. The one towards the top of the page?

A. Yes.

The Court: That is the top of the second page of that document?

Mr. Kashiwa: Yes.

Q. Now, whose signature is that written in Japanese characters towards the center of the page?

A. This signature is that of Mr. Tomejiro Tsutomoto, Mr. Nii's brother-in-law.

Mr. Kashiwa: I offer this in evidence.

The Court: On what theory?

Mr. Gross: I object to this offer.

The Court: What are your objections and what is the theory on which it is offered first?

Mr. Kashiwa: Your Honor, to show intention that everything he had, as is drawn in accordance with the laws of the Territory of Hawaii, he gives to his son.

The Court: Well, just offhand my reaction to it is that it purports to be a last will and testament, and nobody has told this Court yet that the man is dead. At most this could only be a reflection of his intention as of the day he did it. The next day he may have revoked it. [91]

Mr. Kashiwa: Your Honor, in these cases—I

(Testimony of Eisuke Ikinaga.)

have looked it up, and, of course, I know Counsel is later going to come up with a defense——

The Court: The man isn't dead, is he?

Mr. Kashiwa: No. Counsel is later going to come up with a defense of the statute of frauds, your Honor. Now, it is my contention that Mr. Kaneichi Nii—as I stated in my opening statement, when Shoso Nii finished the elementary school, he wanted to go to high school, and instead of his going to high school the father promised him if he stayed that all of his property in Hawaii, if he left Hawaii or if he died, would be his. And this is in part performance of that agreement. And the statute of frauds provides that there should be some memorandum, and a will has been held to be a sufficient memorandum. I have cases on that point, your Honor.

The Court: A man has to be dead first before the will is effective.

Mr. Kashiwa: Yes, your Honor. But I will offer to prove, your Honor, that there was an agreement to make this gift. Now, in these cases where there is a promise, or in this case an additional promise that when he leaves the Territory, your Honor, he will give everything he has at that time to his son—now, there is some question, your Honor, as to whether the real property is involved in that agreement. Your Honor is familiar with the statute of frauds of the Territory of Hawaii. [92] I am speaking of a defense; I don't know whether Counsel will interpose it, that this is purely parol, your Honor, and that the statute of frauds stands in between.

(Testimony of Eisuke Ikinaga.)

The Court: We will come to that, no doubt. But what do you contend this proves?

Mr. Kashiwa: There are thousands of cases of this nature, where a man promises to devise a piece of property to so and so, if this child remains on a farm and works, and the child actually worked for so many years; and there is at a later time a will executed granting the property to the son. In most of the cases, your Honor, that will is subsequently changed. All right. If they get hold of that first will, even though it is executed 'way after the time of the making of the promise, the statute of frauds requires some sort of a memorandum, if you are familiar with the wording of our statute. Unless there is some memorandum—and the courts have held sustaining those, that is, where a will has been offered in evidence, a will signed by the owner of the land. Then, your Honor, the courts have held that a will which is a signed memorandum, signed by the party, that it is a memorandum, a signed memorandum, your Honor. We are not proving the will, your Honor, not in any sense of the word, but as a memorandum, just like a piece of paper which he signed, even if that will was not properly executed—there are many cases in which a will was not properly executed, and then the question came [93] into court. Even though it is not properly executed, as long as there is a signature on the bottom of it, that he promised to devise, it is binding, because the written memorandum takes it out of the statute of



(Testimony of Eisuke Ikinaga.)

frauds. The written memorandum in a case of that nature is a defective will.

The Court: Well, on your theory—I see what you are driving at—but on your theory this memorandum says, if I have anything when I die, which I haven't previously given away, then all the rest that remains of the estate, real, personal, mixed, whatsoever and wheresoever situated of which I may be possessed, of which I may be entitled at the time of my decease, I give to the Plaintiff.

Mr. Kashiwa: Your Honor, in every will that is a presumption.

The Court: I understand that. But you are claiming it is a memorandum of a present gift, are you not?

Mr. Kashiwa: No, your Honor. My contention is that it is a memorandum in 1928 when this child wanted to go to college and be educated, and certain representations were made to this child, your Honor, and in reliance on that he did not take the advantages; he stayed home and worked for the old man on a promise, your Honor, that——

The Court: That his father would do something.

Mr. Kashiwa: ——that he, the father, will will everything to him, that is, if he dies everything would go to him; whereas, [94] if he left Hawaii everything would be his.

The Court: Yes.

Mr. Kashiwa: And relying on that promise, this boy stayed for years in the store and gave up the best portion of his life while he should have been in

(Testimony of Eisuke Ikinaga.)

high school and college. And, your Honor, it is my contention that to prove that promise, that is, a promise to devise land or to give land if he leaves Hawaii, it is my contention to prove that promise. Now, in order to sustain that promise—it is a promise to convey a piece of real property, to give a piece of real property, transfer the title, whatever may be the contingency—in order to do that, your Honor, my contention is that under the statute of frauds, which I am expecting Counsel to bring up, your Honor, there must be a memorandum. This case is very similar, your Honor, to the Shipman case in 26 Hawaii.

The Court: It is very novel. Well, I have got to take a recess. It is two o'clock. I will hear your objection after the recess.

(A recess was taken at 2:00 o'clock.)

#### After Recess

The Court: Mr. Kashiwa, I have looked during the recess at the Shipman case. There the man had died and the will was an effective instrument.

Mr. Kashiwa: But there are cases in which the man doesn't die but where the party performs his part of the agreement, [95] the party relying on the promise to such an extent that even if he does not die still the equitable interest is enforceable.

The Court: I'd like to see those, because at most it would seem to me that this would tend to prove simply that on this particular date it was the man's intention to do something about his property effective when he died. Now, further,—I repeat with

(Testimony of Eisuke Ikinaga.)

emphasis—you have talked about some promise that the father allegedly made to sign, to leave the property if he went to Japan or if he died, of which this memorandum, as you claim, is enough to take that oral promise out of the statute of frauds. But I repeat again, I have heard you talk about it but I haven't heard any witness talk about it.

Mr. Kashiwa: I offered to prove that by the Plaintiff.

The Court: But at best this offer is premature.

Mr. Kashiwa: May it be marked for identification at the present time?

The Court: It has been.

Mr. Kashiwa: He has testified as to the signature.

The Court: It has been marked for identification as exhibit—

The Clerk: Plaintiff's 1 for identification.

Mr. Kashiwa: I have an exact reproduction of that will, your Honor. May this be substituted for the original will, [96] your Honor?

The Court: Yes.

Mr. Gross: Neither one of them is in evidence yet. Until such time as the Court admits them in evidence, why I gather that the Japanese characters which are there conform to your Honor's and the interpreter's best idea of the reproduction of the Japanese characters on the original, is that correct?

Mr. Adachi: Yes.

The Court: Well, you are technically right.

(Testimony of Eisuke Ikinaga.)

There is no basis for producing a substitute. However, this is simply marked for identification.

Mr. Kashiwa: Your Honor, at a later time when it is received in evidence I will——

The Court: I think it is perfectly safe in the Clerk's custody. And for all any of us know, he may have made a will yesterday in Japan. Proceed.

Q. Mr. Ikinaga, did Mr. Kaneichi Nii own any shares in the Waipahu Garage?

A. Yes, he had. He has about 300, a little over 310, somewhere between 310 to 320.

The Court: Who has?

The Witness: Mr. Kaneichi Nii.

Q. I mean in 1935, how many shares did Kaneichi Nii have?

A. I was speaking of that time, 1935. At the present [97] we have declared dividends. And he has exactly doubled that amount.

Q. Mr. Interpreter, you mean stock dividends?

A. Yes, stock dividends.

Q. In 1935 how many shares were there outstanding?

Mr. Gross: If the Court please, I would like to object to this line of questioning on the grounds that the corporate structure of the Waipahu Garage is not before the Court. A certain piece of real estate has been vested. Counsel claims that the real estate was given from the father to the son. The Court in its indulgence has permitted Counsel to go into a lot of surrounding circumstances. Now, I cannot see what the corporate structure of the Waipahu Ga-

(Testimony of Eisuke Ikinaga.)

rage—I'd like this thing to lead up to the issue which Counsel himself has created, namely, that there was a gift to this man of this property which we vested. This seems to me to be pretty far afield.

Mr. Kashiwa: I offer to prove that this so-called agreement, that even after the father went back to Japan, although the stocks remained in the father's name, up to 1939 when it was changed to his son's name, although it was in the father's name, still the dividends were paid to Shoso Nii as the beneficial owner. And to show, your Honor, that all of the property in the Territory was dealt with in accordance with that agreement. It is circumstantial evidence.

The Court: Well, you are now asking this witness to tell [98] you how many shares in the whole corporation there were. I am not interested in this corporation.

Mr. Kashiwa: All right. I will withdraw that question.

Q. When were these shares in Kaneichi Nii's name changed to Shoso Nii's name?

The Court: You are assuming something.

Mr. Gross: I object to that, that it is a leading question.

Mr. Kashiwa: I will withdraw that question.

Mr. Gross: And on the grounds it is irrelevant.

The Court: It is withdrawn.

Q. Were these shares in Kaneichi Nii's name, which were in Kaneichi's name, Kaneichi Nii's



(Testimony of Eisuke Ikinaga.)

name in 1935 at any time changed to Shoso Nii's name?

Mr. Gross: Objected to as being a leading question. If you want to ask him whether they were changed, state what was done with the stock certificates, and that is a different matter. I still want to maintain that the entire line—I want to maintain the entire line of objections to this whole line of questions on the grounds that it is not before the Court. It is not an issue that has been framed by the pleadings.

The Court: Overruled.

A. Yes, it was subsequently changed to Mr. Shoso Nii's name, but I do not recollect exactly when that was. [99]

Q. During what year was it?

The Court: Wait a minute. I've got to follow this. I don't mean to be interrupting but I can't follow this. He jumps around. He says later it was changed. What was changed? What is he talking about?

Mr. Kashiwa: The three hundred and some.

The Court: Well, I want him to tell me. I want the witness to tell me.

A. The name on the stocks were changed, the shares were changed from Mr. Kaneichi Nii's name to Mr. Shoso Nii's name. I do not know when that change took place.

Q. Was that immediately after 1935?

A. I don't remember.

(Testimony of Eisuke Ikinaga.)

Q. Now, after Kaneichi Nii returned to Japan, whom did you pay the dividends to?

Mr. Gross: Objected to as calling for a conclusion of the witness. The best evidence of who they paid the dividends to would be the cancelled checks.

Mr. Kashiwa: No, your honor.

The Court: Depending to whom the dividends were paid.

Mr. Gross: I object to the form of the question and I object to the substance of the question. There is no testimony that dividends were paid. And if Mr. Kashiwa is trying to prove that the dividends were paid to someone other than the registered owner of the stocks, I think the best evidence of that [100] would be the cancelled checks.

Mr. Kashiwa: Your Honor, the paying of dividends—an official of the corporation may testify to whom he paid.

The Court: The best evidence would be the records of the corporation.

Mr. Kashiwa: This is not, your Honor, a document. A payment, your Honor, need not be proved. It is not documentary. The best evidence, when there is any document, the act of payment, your Honor, whether it is paid by check—you don't have to bring the document or the book in; payment, to whom it was paid, that is a matter any witness could testify to if he has any knowledge of it.

The Court: Not in the face of the best evidence rule. Without doubt, as an officer of the corporation, he probably knows. But you are met with the best

(Testimony of Eisuke Ikinaga.)

evidence objection, and with the best evidence of to whom the corporation paid dividends, and that is the corporate records. There is no question about that.

Mr. Kashiwa: Your Honor, I am not proving any contents of any documents.

The Court: No, you are trying to prove to whom the corporation paid dividends. And the best evidence of what is the corporate records. There is no question about that.

Mr. Kashiwa: Your Honor, the payment of the claim to whom it was paid—I am not proving the contents of any record, [101] I mean any document. The best evidence rule applies, your Honor, only when I try to prove the contents of a document. I can cite that right in this——

Mr. Gross: I think the best evidence rule applies when you are trying to prove anything than by the best evidence. In other words, if you are trying to prove anything by secondary evidence, I believe it is incumbent on the Counsel to show that the best evidence is not available and that therefore secondary evidence must be admitted into evidence. Now, the Waipahu Garage is not so far away from here. If Counsel has any serious objections to producing the checks showing the payment, I think he should so state. I think the best evidence as to whom the dividends were paid would be the cancelled checks or books of the corporation. I don't want the Court to feel that we are objecting to a statement or a fact that dividends were paid. That is not what

(Testimony of Eisuke Ikinaga.)

we are invoking the best evidence rule on. We are invoking the best evidence rule as to whom they were paid to. As a matter of fact, we don't know whether dividends were paid or not. The corporate records would be the best evidence of all of that. And they are not so unavailable. Waipahu Garage is a matter of a half hour's automobile drive from here.

The Court: It seems to me, in the face of the best evidence rule, that the objection is well taken.

Q. Mr. Ikinaga, do you have at your Waipahu Garage [102] a book showing the payment of dividends? A. Yes.

Q. Do you have the cancelled checks showing the payment of dividends? A. Yes.

Q. Will you be able to produce those tomorrow?

A. Since about a week ago we had moved to Pearl City and everything is rather congested now. I doubt if I can find the records from now until tomorrow morning.

Q. And you have the stock book there?

A. Yes.

Q. Can you bring that in?

A. Yes, I think I can.

Mr. Kashiwa: That will be all the questions of this witness for the time being, your Honor.

The Court: Cross-examination?

Mr. Kashiwa: That is, I haven't rested yet. For the time being.

The Court: You mean you haven't finished with the witness?

(Testimony of Eisuke Ikinaga.)

Mr. Kashiwa: Our direct examination is not finished.

The Court: That is clear. You may cross-examine if you wish at this time on that which the witness has testified to. Or you may reserve your right to cross-examine. Which do you wish to do? [103]

Mr. Gross: We will cross-examine at this time and reserve the right to further cross-examination.

The Court: All right.

### Cross-Examination

By Mr. Gross:

Q. Mr. Ikinaga, did you ever converse with me in English? Wait a minute. Did you ever converse with me in English at the Waipahu Garage on the night of the stockholders meeting out there? Do you understand what I said? Did you talk with me? A. Not good understand.

Q. But you talked to me in English when we were at a stockholders meeting at the Waipahu Garage, didn't you?

A. Well, at that time I talk mostly Japanese.

Mr. Gross: That's all.

The Court: The witness is excused subject to reporting tomorrow for further examination. Next witness.

(Witness excused.)



## SHIGEO MATSUURA,

a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

## Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: My name is Shigeo Matsuura.

The Court: Once again? [104]

The Witness: M-a-t-s-u-u-r-a.

The Court: How old are you?

The Witness: Thirty-two.

The Court: Where do you live?

The Witness: Upper Manoa Road.

The Court: Honolulu?

The Witness: Yes.

The Court: And what is your occupation?

The Witness: Accountant.

The Court: Of what country are you a citizen?

The Witness: U. S., United States.

The Court: Exclusively, only?

The Witness: What is that?

The Court: Only?

The Witness: Yes, sir.

The Court: Take the witness.

Q. (By Mr. Kashiwa): What is your occupation?  
A. I am an accountant.

Q. How long have you been an accountant?

A. Ever since the latter part of July, 1935.

Q. Where did you work in July, 1935?

A. For Omurei, Fred.

Q. Is that accounting firm still in operation?

(Testimony of Shigeo Matsuura.)

A. No. [105]

Q. What happened to it?

A. Ever since Mr. Omurei went to Japan——

Q. When was that?

A. I think that was in 1936.

Q. What happened after that?

A. And Mr. Nagatori and Mr. Akahoshi bought the place.

Q. And what happened to that firm of Nagatori and Akahoshi?

A. They used to have an office in the Dillingham Building but ever since the Government took over the building soon after the outbreak of war, since there was no space, both of them had to split up and Akahoshi took another section of the Dillingham Building and we moved over to Arcade Building.

Q. Who do you mean by “we”?

A. Nagatori Accounting Office.

Q. Now, did Mr. Omurei keep the accounts of the Nii Store at Waipahu?      A. That’s right.

Q. In 1935, July, when you got into the Omurei accounting office, was the Nii Store accounting kept by Mr. Omurei?

A. The Nii Store accounts were handled by Omurei accounting office.

Q. It was there when you went there?

A. Yes.

Q. Now, when it split, when the business was transferred [106] was the Nii Store handled by Nagatori and Akahoshi?      A. That’s right.

(Testimony of Shigeo Matsuura.)

Q. And after Mr. Akahoshi and Mr. Nagatori divided their business, where did the Nii Store account go to?

A. The Nii Store went to the Nagatori accounting office.

Q. And you have been right through together with Mr. Omrei and then the partnership and now with Mr. Nagatori? A. That's right.

Q. Are you familiar with the Nii store accounts?

A. That's right.

Q. I asked you to bring over some files which you have. Did you bring them over?

A. Yes.

Q. What do you have there?

A. I have the tax returns here.

Q. For what years?

A. From year '38 up to '47.

Q. Whose tax returns?

A. For Shoso Nii.

Q. These are tax returns under what law?

A. For the United States, Federal.

Q. What kind of tax?

A. Internal Revenue.

Q. What kind of income?

A. For the store business as well as the rental.

Q. The net income tax ?

A. Net income tax.

Q. What happened to the returns before 1938?

A. Well, the bookkeeper prior to me used to keep the books but I don't know what happened to the returns.

(Testimony of Shigeo Matsuura.)

Q. Are these from the files of your office?

A. That's right.

Q. Now, these are not the originals, are they?

A. No, that's the duplicate. The originals we have filed.

Q. Will you tell us how these duplicate copies are made?

A. We make a pencil copy which is for our office, and we have the office girls type out the tax return which we file into the Government, and the pencil copy is left over in our office.

Q. Is that done in the usual course of business of your office?

A. That's right.

Q. Now, in all of these income tax returns, is rental shown as a separate item?

Mr. Gross: I am going to object to Counsel questioning this witness about a document which is not before the Court, which has not been identified, which I have not examined, which the Court has not examined, and as far as I know the witness has not examined since he has been here. And if it is [108] the purpose of Counsel to endeavor to get these income tax returns, or whatever they may be, the sheaf of papers, into evidence, I suggest that they be identified and that proper foundation be made before he starts getting a lot of evidence into the record which is off those returns. I think the question which he just asked is so vital and is such a conclusion of the witness that I'd like to have that matter straightened out at this time.

(Testimony of Shigeo Matsuura.)

The Court: Any objection to having them marked for identification?

Mr. Kashiwa: No, your Honor. That may be marked for identification, your Honor.

The Court: Yes. Mr. Clerk——

The Clerk: Plaintiff's No. 2 for identification.

The Court: All of those are 2?

The Clerk: Yes, your Honor. I don't know what they all are.

The Court: How many are there?

The Clerk: There are ten, copies of ten returns from the year 1938 to 1947, inclusive.

The Court: All right. Proceed.

(The documents referred to were marked "Plaintiff's Exhibit No. 2 for identification.")

Mr. Kashiwa: Your Honor, at this time may I temporarily withdraw the witness here for the purpose of introducing a [109] power of attorney?

The Court: Through another witness?

Mr. Kashiwa: Yes, your Honor. In order that this witness testify, we must prove the power of attorney.

The Court: All right. You are excused temporarily.

(Witness excused.)

Mr. Kashiwa: Mr. Mikami.

Mr. Gross: He is not here. You didn't subpoena him.

Mr. Kashiwa: He is out here.

Mr. Gross: But I am not going to subpoena



(Testimony of Shigeo Matsuura.)

him. He is not my witness. If the Court please, I want to object to Mr. Mikami's testimony on the grounds that he was subpoenaed by the Plaintiff. He was subpoenaed by the Plaintiff in this case.

The Court: Well, I am not interested in who subpoenaed him. I am interested in the fact that he is here.

Mr. Gross: If the Court please, I think we might be able to save some time here. If all that Mr. Kashiwa wants to get into evidence is a certified copy of a power of attorney which was recorded, I think that he has a photostatic copy, at least he showed it to me, of this power of attorney. Mr. Mikami is not competent to testify as to the signature because the signature here is the signature of Shoso Nii, who is in the courtroom. And if Shoso Nii executed this power of attorney, let's put him on the witness stand and let him so testify.

The Court: Well, I do wish that you lawyers would stop talking long enough so I can find out from the witness what is going on here. Most of what I know about this case I get from you gentlemen rather than from the witnesses. Let's proceed, unless you wish to agree with what he is up to there. I want to hear what the witness has to say. Then I may know about what you are talking about. But at the moment I don't. It's like so much Greek to me. You start off with the suggestion that you might save time, but I can't see it.

Mr. Kashiwa: I offer this power of attorney

(Testimony of Shigeo Matsuura.)

executed by Shoso Nii to Katsutoshi Mikami in evidence, your Honor.

Mr. Gross: Objected to as being irrelevant and immaterial.

The Court: There is no basis for its being received at the moment. You called the witness. Get the witness sworn and proceed. Do you speak English?

Mr. Mikami: I cannot.

Mr. Gross: Doesn't he speak English very well?

The Court: What is going on here? You say he does speak good English and then he is subpoenaed by you and I ask him and he say he doesn't speak English. Do you or do you not speak English?

Mr. Mikami: No, I cannot speak English. I cannot speak good English.

The Court: I didn't ask you whether you spoke it well or not. I just asked you whether you spoke and understood [111] English.

Mr. Mikami: No.

The Court: Do you understand the Clerk? He is asking you to take an oath. You listen to him again.

Mr. Gross: Let's just stipulate on this into evidence.

The Court: Stipulate what?

Mr. Gross: This power of attorney. And we can probably excuse this witness. He speaks some English but he apparently doesn't speak it very well.

(Testimony of Shigeo Matsuura.)

The Court: Now both attorneys are agreeable to this document being received in evidence?

Mr. Gross: That's right, this document here.

The Court: Do you wish this witness any more?

Mr. Kashiwa: Just to identify the signature.

The Court: On the tax returns?

Mr. Kashiwa: Yes.

The Court: All right. But he still has got to be sworn. But at the moment this document may be received in evidence as the Plaintiff's exhibit next in order.

The Clerk: Plaintiff's Exhibit "C."

The Court: That is called the power of attorney from whom to whom?

Mr. Kashiwa: Shoso Nii to Katsutoshi Mikami.

(The document referred to was received in evidence as "Plaintiff's Exhibit C.")

[Printer's Note: Plaintiff's Exhibit C is set out in full at page 410 of this printed Record.]

### KATSUTOSHI MIKAMI,

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

#### Direct Examination

The Court: Have you ever been a witness in court before?

The Witness: No, I haven't.

The Court: You are probably scared. You seem-

(Testimony of Katsutoshi Mikami.)

ingly speak English all right. I can understand you. Relax and proceed. Tell me your name, age, residence, occupation and citizenship? What is your name? Your name is what?

The Witness: Katsutoshi Mikami.

The Court: How old are you?

The Witness: Forty-three.

The Court: Where do you live?

The Witness: Honolulu.

The Court: What is your occupation?

The Witness: Soya Company.

The Court: You work there and do what?

The Witness: Soya sauce.

The Court: They make that?

The Witness: No, I deliver to store.

The Court: You deliver it? You are a salesman?

The Witness: Yes.

The Court: And of what country or countries are you a citizen or subject?

The Witness: Japan. [113]

The Court: You are a subject of Japan only?

The Witness: Born in Japan.

The Court: All right. Take the witness.

Q. (By Mr. Kashiwa): Now, from 1941 to the latter part of 1948—'47—you were the attorney-in-fact for Shoso Nii? A. Yes.

The Court: What is the answer?

The Witness: Yes.

The Court: Speak louder. I have got to hear you.

(Testimony of Katsutoshi Mikami.)

Q. You took care of the S. Nii store at Waipahu during those years? A. Yes.

Q. And who made the tax returns for the business?

A. Nagatori accounting, books, Nagatori accounting.

Q. Now, did you see Mr. Matsuura who was on the witness stand a little while ago?

A. Yes.

Q. You know him, don't you? A. Yes.

Q. Did he attend to the books? A. Yes.

Q. Now, the figures from the store were taken by whom to the Nagatori accounting office?

A. I no understand. [114]

Q. The total sales figures and the vouchers were taken over by whom to the Nagatori office? Who took it over there? A. Matsuura.

Q. Matsuura? A. Matsuura.

Q. Who took it over there? Who took the figures and the data to make the tax returns with?

The Court: Do you understand him?

The Witness: I can't.

Mr. Kashiwa: I will withdraw the question.

Q. The daily sales figures, purchases, the figures, who took it over to Mr. Nagatori's office?

A. I took it down.

Q. You did? A. Yes.

Q. The rentals collected from this property here near the Waipahu River, was that reported to Mr. Nagatori? A. Yes.

Q. Now, when Mr. Shoso Nii was absent in Ja-



(Testimony of Katsutoshi Mikami.)

pan, who signed the tax returns, U. S. net income tax return forms?      A. Me.

Q. You did?      A. Yes.

Q. Now, on one of the copies here,—referring to Plaintiff's No. 2 for identification here—for the year 1943, [115] signature of Katsutoshi Mikami appears. Is that your signature?

A. Yes.

Mr. Kashiwa: That's all.

The Court: Cross-examination?

Mr. Gross: No cross-examination.

The Court: You are excused.

Mr. Gross: We can't excuse this witness yet. He was called by me.

The Court: You called him.

Mr. Kashiwa: No, Mr. Gross called him.

The Court: I repeat, you called **him** to the stand. That is all I know. He is excused. Now don't argue with me.

(Witness excused.)

The Court: Now you are calling back the same witness who was excused, Matsuura.

SHIGEO MATSUURA,

a witness in behalf of the Plaintiff, having previously been sworn, was recalled and testified further as follows:

Direct Examination

(Continued)

The Court: I remind you, Mr. Matsuura, that you are still under oath. You may continue with your examination.

(Testimony of Shigeo Matsuura.)

Q. (By Mr. Kashiwa): Mr. Matsuura, these U. S. income tax returns between the years 1941 and 1947 were made and officially submitted to [116] you by whom? A. By Mr. Mikami.

Q. And prior to that, for 1940, '39 and '38, they were made, officially presented to you by whom? A. Mr. Shoso Nii.

Q. Now, these are from your files?

A. That's right.

Q. Look at the entire list. Whose tax returns are they? A. It is for Shoso Nii.

Mr. Kashiwa: I offer these in evidence, your Honor.

Mr. Gross: I object to those being offered in evidence. There is no evidence that these are true and exact copies, true and exact copies of the originals. I don't know for what purpose they are being offered in evidence. As far as I am concerned, the income tax returns of Shoso Nii for the years 1940, '38 to '47, inclusive, are completely irrelevant to the issues here. The issue here is whether there was a gift of a piece of real estate. There is no evidence in addition. An examination of these returns shows that they were written in pencil. The witness has not testified that he has personally examined them since he was called by Mr. Kashiwa, and that he knows of his own knowledge that they are true and correct copies of the original; that they were not offered between the time they were prepared and the time they were filed—

(Testimony of Shigeo Matsuura.)

Mr. Kashiwa: I will withdraw my offer at the present time.

Q. Mr. Matsuura, these returns for the respective years from '38 to '47, are they exact copies of the returns as filed? A. That's right.

Q. Now, you look at the returns here. Is there a separate entry in those returns showing rentals received?

Mr. Gross: If the Court please, these returns are not in evidence yet, and I would like to object to the witness being interrogated as to what is in the returns until they have been received in evidence. They have been identified. I don't feel that an adequate foundation has been laid to show that they are true and correct copies, that they were made by this witness, if he will testify that he personally made these out, that they were in his own handwriting—something so that I know that these didn't just come from a file. There may have been several copies. It is not unusual for people to make mistakes in preparing income tax returns and they have to make several pencil copies if for no other reason than a mistake in arithmetic.

Mr. Kashiwa: Your Honor, he testified that these are true copies of the returns as filed.

The Court: Yes, he has testified to that. Now you are asking him as to the substance or contents of these documents, and they are not yet in evidence, and I don't think you can. [118]

Mr. Kashiwa: I will offer these in evidence at this time.

(Testimony of Shigeo Matsuura.)

The Court: And the purpose is?

Mr. Kashiwa: The purpose is to prove that Shoso Nii during these years, as shown in the tax returns, paid the taxes on the income from the rentals of this particular property in dispute.

The Court: Is there anything there to reveal as to that which was headed "rentals" that came from this property?

Mr. Gross: I haven't had a chance to examine the returns.

The Court: There appears to be on these returns a place for reporting rentals received during the year, but at the moment, unless this witness supplements his testimony, how do I know these are the rentals you and Mr. Gross are talking about?

Mr. Kashiwa: I will prove that. I will offer to prove that the rentals as indicated in the net income tax returns, the greater portion of the rental is rental from this property.

The Court: Do you wish to do that before pressing your offer?

Mr. Gross: Sorry, I didn't get that.

The Court: I pointed out to him that even assuming—or let me reword that—that the rentals reflected therein are not revealed by those exhibits for identification as being rentals from the property that you and he are concerned about. He said he could clear that up. [119]

Mr. Gross: I object to these being received in evidence on the further grounds that they are

(Testimony of Shigeo Matsuura.)

self-serving statements. The income tax return filed by the average person is prepared by himself or by someone under his employ to reflect a certain condition. We are talking about the title to a piece of real estate here.

The Court: Well, sometimes I wonder what we are talking about or trying. But I can't quite conceive in this day and age income tax returns being self-serving especially when we get taxed so much.

Mr. Gross: I have had that ruling sustained on me.

The Court: That doesn't impress me particularly. Well, anyway, at the moment no showing has been made what rentals are being talked about.

Mr. Kashiwa: All right. I will withdraw that offer for the time being, your Honor.

Q. Have you examined these returns? Now, in all of the returns from '38 to '47 there is a column there for rentals, is there not?

A. That's right.

Q. And in all of those returns there are figures in there for rentals received?

A. That's right.

Q. Now, what are those rentals for?

A. Those rentals include income from both, all the [120] property that is under Shoso Nii's name, that is, the entire property that they own, rental from all the property.

Q. Was the rental from the home in which Konno lived received and included in there?



(Testimony of Shigeo Matsuura.)

A. That's right.

Q. And the other tenants on that Waipahu River property?

A. That's right.

Q. And that was included every year in those returns?

A. That's right.

Q. What was the total rental income in 1947 from that Waipahu River property?

A. That portion of the rent I think is being withheld by the Alien Property during the year 1947.

Q. What about 1946?

A. I think it was in both years, '46 and '47, because in '45 they had a total rent of \$3,380.79 which includes income from both properties.

Q. For '45 was that included?

A. That's right, '45.

Q. Between 1938 and '45, then, was the rental from that Waipahu River property all included in that?

A. That's right, everything.

Mr. Gross: I hate to reiterate my objection so much but the witness is testifying from a document which has not been received in evidence, and all of this is going into the record. [121] I move to strike it all until the documents have been put into evidence.

Mr. Kashiwa: I offer these in evidence, your Honor.

The Court: Overruled.

Mr. Kashiwa: I offer these in evidence, your Honor.

The Court: All right. They may be received.

(Testimony of Shigeo Matsuura.)

The pending objection is overruled and you may have an exception on each ground.

The Clerk: Plaintiff's Exhibit "D-1" to "D-10" inclusive.

(The documents referred to were received in evidence as "Plaintiff's Exhibit D-1 to D-10, inclusive.")

[Printer's Note: Plaintiff's Exhibit D-1 to D-10 are set out in full at pages 413 to 442 of this printed Record.]

Mr. Gross: If the Court please, I wonder if the Court would let my objection go through until I cross-examine this witness with reference to these documents?

The Court: Yes, they may run to the line.

Mr. Gross: Thank you.

Q. (By Mr. Kashiwa): Are payments of real property taxes shown on those returns?

A. I believe it is.

Q. Will you take a look there?

The Court: The Clerk has ten of these to mark. I will take a short recess.

(A short recess was taken at 3:10 p.m.)

#### After Recess

The Court: All right.

Q. (By Mr. Kashiwa): During the period you were at this office, from July, 1935, to the present date, up to the time the Alien Property Custodian's Office took the property in dispute in this

(Testimony of Shigeo Matsuura.)

case, who paid the real property taxes for that property?

Mr. Gross: I object to that on the grounds that there has been no testimony by the witness that he knows who paid the personal property taxes.

The Court: Sustained.

Q. Do you know who paid the real property taxes for the land in dispute in this case, 1935, up to the time the Alien Property Custodian took the property?

A. You mean prior to the Alien Property taking over the property?

Q. Yes.

A. Yes, Shoso Nii paid that.

Q. And that is the Territorial real property?

A. Territorial, that's right.

Q. Who paid the gross income tax for the rent?

A. Shoso Nii.

Q. Since the time you got into the office in 1935 up to the time the Alien Property Custodian took the property?

A. That's right.

Mr. Gross: If the Court please, objection to the whole [123] line of testimony on the grounds that he hasn't testified that he has personal knowledge of the payments.

The Court: You asked that your objection and exception to run to the line on a little different basis than that which you just mentioned. We are constantly faced with that. Witnesses are always

(Testimony of Shigeo Matsuura.)

presumed to be testifying of their own knowledge until it is shown to the contrary. I presume that he is testifying as to his own knowledge. If it is shown otherwise, then I can entertain a motion to strike. All right. Proceed.

Q. Now, there is another tax of the Territorial net income tax. Are you familiar with that?

A. That's right.

Q. In 1935 when you got into the office up to the time the Alien Property Custodian took this property over, who paid the Territorial net income tax? A. Shoso Nii paid.

Q. And the rental from this property?

A. That's right.

Q. Who paid it? A. Shoso Nii.

Q. When was the personal property, the Territorial personal property tax abolished?

A. It was in 1947, I believe.

Q. Prior to that time were there any furnishings in the [124] three houses located on the property in dispute next to the Waipahu River?

A. I wouldn't know about that.

Mr. Kashiwa: That's all.

The Court: Cross-examination?

#### Cross-Examination

By Mr. Gross:

Q. Did you personally see Shoso Nii pay any of these taxes?

A. Well, I think we have records at the office——

(Testimony of Shigeo Matsuura.)

Mr. Gross: Mark these documents for identification, please, as Defendant's.

The Clerk: You want them separately? "A-1," "A-2" and "A-3" for identification.

The Court: Very well. What is the label describing these documents?

The Clerk: These are Territorial real property tax bills for the years 1945, 1946 and 1947.

The Court: All right.

Q. I hand you papers marked "Defendant's Exhibits for Identification A-1, A-2, A-3" and ask you to examine them and state what they are, if you know?

A. This is the real property tax bill.

Q. Real property tax bill for what?

A. Kaneichi Nii's property for the years 1945, '46 [125] and '47.

Q. Did you pay those tax bills?

A. Well, I will have to look over my records first.

Q. Did Shoso Nii pay them?

A. Whatever Nii paid, it shows Ni paid for it. For those properties which is under Mikami's, I believe he paid for some of it. He took over the leased property, on certain property, you see.

Q. In whose name are those bills made out?

A. Those bills are made out in Kaneichi Nii.

Q. And at whose office were they returned to?

A. Tax collector.

Q. Was the address given for the person who is to pay the tax?

A. Omurei.



(Testimony of Shigeo Matsuura.)

Q. Were you in that office at that time?

A. Well, he was there, I think.

Q. No, my question is, were you in that office at that time?

A. You mean at the time that these were paid?

Q. Yes. A. That I wouldn't know.

Q. Mr. Witness, did you understand my question? A. Yes.

Q. And your answer is still that you didn't know, is [126] that it?

A. You mean the time that he paid, the day that he made these payments? I wouldn't know the exact time.

Q. Have you ever seen bills like that before?

A. I have.

Q. Like those bills there?

A. That's right.

Mr. Gross: I haven't introduced them in evidence yet. You can examine them.

Q. How old did you state that you were?

A. What is the question?

Q. How old did you state that you were? What is your age? A. Thirty-two.

Q. Thirty-two? A. That's right.

Q. In 1935 how old were you?

A. Well, I was about 18 or 19, I believe.

Q. And when did you start to work on the Nii accounts? A. Some time in 1938.

Q. Are you a certified public accountant?

A. No.

Q. Did you attend any accounting school?

(Testimony of Shigeo Matsuura.)

A. Yes.

Q. Where? [127]

A. West Commercial School.

Q. West Commercial School? A. Yes.

Q. By whom were you employed during the years 1945, 1946 and 1947?

A. Nagatori accounting office.

Q. Were you not employed by F. Y. Omurei?

A. No.

Q. Can you, by referring to the exhibits, the income tax returns which have been received in evidence here, state what the real estate taxes were, the amount of the real estate taxes that were paid for the years 1945, 1946 and 1947?

The Court: Exhibit "D."

The Clerk: D-8, 9 and 10.

A. I think for the years Mr. Mikami paid that, if I am not mistaken, because he took over the rental of this portion of the property there.

Q. Then you wish to change your testimony?

A. Not on that property across the river. That we have—I believe I can bring down receipts showing that we paid for that.

The Court: I'm lost.

Mr. Gross: So am I.

The Court: The property across the river?

The Witness: I mean the property in dispute right now. [128] It is a very small real property tax on that. I think I can have the receipts or something to that—that we paid for it.

Q. You were not in the F. Y. Omurei account-

(Testimony of Shigeo Matsuura.)

ing office in the years 1945, '46 and '47, were you?

A. No, that is Nagatori accounting office now.

Mr. Kashiwa: Your Honor, the testimony showed that Omurei went back to Japan in 1936. That is the old address here. And the business was taken over by Nagatori. He is working at the Nagatori office.

The Court: Well, I don't know what you gentlemen know. This man Omurei may have gone to Japan in '36 but he still may have kept his business under that name. I don't know.

Mr. Gross: Neither do I, if the Court please.

The Court: On the facts so far, there are very few things I know about this case.

Q. Will you explain to the Court how you prepared those income tax returns for the years in question? Just exactly what you did to prepare those income tax returns?

A. Well, I had the information from Mr. Mikami during those years and he used to bring over the books every month which we recorded in our books. And at the end of the year we made a tax return on that.

Q. Did you personally examine the books?

A. That's right.

Q. Which Mr. Mikami—you personally examined those books? [129] A. Yes.

Q. Do you know how the real estate tax bills for the Territory of Hawaii were paid, the manner of payment?

A. You mean on which property is that?

(Testimony of Shigeo Matsuura.)

Q. On the property which you claim is the subject matter of this law suit. You are familiar with the one that is the subject matter of this law suit, aren't you?      A. Yes.

Q. Now, in what manner were those taxes paid—by check, cash or by whom?

A. I believe it was by check.

Q. And who drew the check?

A. During those periods in question I think Mr. Mikami signed for them. He was in charge of the Nii store during that period.

Q. So you don't know of your personal knowledge how they were paid, do you?

A. Well, it would be paid by Mr. Mikami, anything to do with Nii's store.

Q. Did you understand the question, Mr. Witness?      A. Yes.

Q. Do you know of your personal knowledge how these taxes were paid?

A. Because all the taxes are usually paid by check and I believe that was one of the taxes which was paid by check. [130]

Q. You state you believe. Do you know?

A. Well, I have to go over my records. Then I could tell for sure.

Q. Would your records show how these taxes were paid?      A. That's right.

Q. Do you have them here with you?

A. No, I don't have it here.

Q. Can you produce them?

(Testimony of Shigeo Matsuura.)

A. Well, it is down at the office. It is in a big book, ledger, and all that thing.

Q. Well, let's pass that for the time being. Who wrote out the checks payable to the Territory of Hawaii for these tax bills, if you know?

A. All the taxes were brought to Nagatori accounting office and we in turn paid them to the tax office. That wasn't the real property tax alone. That included gross income, unemployment compensation, all together.

Q. Excuse me, Mr. Witness. I want you to confine your answer only to this real estate that is the subject matter of this law suit. I want you to state, if you know of your own knowledge, how those taxes were paid. Who prepared the checks, whether they were prepared in your office, by Mr. Mikami, who signed them, and who took them over to the Territorial Tax Office?

A. That is as I say, I have to look through the records [131] to see exactly what day they paid it and all that. But the checks were issued by Mr. Mikami.

Q. Then am I correct that your answer is that the checks were prepared by Mr. Mikami and that he took them over to the Territorial Tax Office?

A. That is what I was explaining to you, that the checks are not cut just one to each place but it includes both gross income as far as real property, unemployment compensation, all that together. They paid directly to the office in one check and we in turn paid that to the tax office. We have



(Testimony of Shigeo Matsuura.)

to separate that and pay to the Territory of Hawaii and Internal Revenue.

The Court: Let me see if I understand what you are saying. The taxpayer is advised by you as to how much taxes of all kinds and descriptions he owes?

The Witness: That's right.

The Court: And he gives you one check to cover all taxes?

The Witness: That's right.

The Court: And then your office in turn pays the individual taxes?

The Witness: That's right.

The Court: For the person, the client?

The Witness: That's right, yes.

The Court: Then your record should show that your office paid some of these taxes that Mr. Gross is talking about? [132]

The Witness: That's right. But that I have to look through the record to see exactly.

Q. I will ask you to re-examine Defendant's Exhibits "A-1," "A-2" and "A-3" for identification and ask you whether by referring to those exhibits it will assist you in recollecting the manner in which the taxes were paid for those three years?

A. Well, I can't tell for sure. I have to look through the books first to see, because I can't remember all this right offhand.

Q. Have you ever seen tax bills similar to those?

A. I have.

(Testimony of Shigeo Matsuura.)

Q. For this property?

A. I think I have.

Q. Now, I want to call your attention to the years 1935 to 1938. Did you personally have charge of the payment of real estate taxes on the real estate involved in this lawsuit at that time?

A. No.

Q. Who did?

A. It is one of the girls in the office that used to take care of that, all real property taxes. Some people took care of the Territorial income tax, Federal.

Q. Can you state who in your office had the responsibility for paying the Territory of Hawaii real estate taxes on the [133] real estate involved in this lawsuit for the years 1935 to 1941?

A. Well, we have about three girls in the office. I can't tell for sure which one did pay those.

Q. Is your answer that one of the three girls made the payment?      A. That's right.

Q. You did not make the payment?

A. No.

Q. Then you don't know how the payment was made, do you?

A. The only thing I know is that it is recorded in the book. That's all.

Q. If the girl should make an error and make the error in recording, then you would be misinformed, would you?

A. But we have the tax receipts to show for that.

(Testimony of Shigeo Matsuura.)

Q. Who makes the entries in those books?

A. I do. You mean on Mr. Nii's books?

Q. With reference to the real estate which is the subject matter of this lawsuit only. That is the only matter that I am directing my question to. Do you understand that?

A. That's right.

The Court: Do you have the question in mind? He has lost the question.

Q. Mr. Witness, I want you to tell the Court who had [134] charge of paying the Territory of Hawaii real estate taxes for the years 1935 to date, if you know?

A. That I can't tell you. Maybe one of the three girls.

Q. What are the names of the three girls?

A. Well, we have girls off and on. A lot of them are not in our employment any more.

Q. By stating three girls, do you mean that they drew the checks and took them over to the tax office?

A. No. Well, we are not collecting just Mr. Nii's money. We collect taxes from all our clients.

Q. Mr. Witness, I want you to confine your answers to the real estate taxes on the real estate involved in this lawsuit. I am not interested in anything else.

A. That's right. But we don't just pay the taxes. We cannot issue one check for 72 cents. We get a lump of all those real property taxes for many clients and pay it at one time.

(Testimony of Shigeo Matsuura.)

Q. Then you did not draw a separate check against the Nii account for these tax bills, is that right?

A. It may be that we have it lumped with some other taxes. But I can't tell you for sure whether it was just one check that we issued on that.

Q. Did you see the tax bills before they were paid?

A. Some years I have. Some years I haven't.

Q. If the girl made a mistake in paying the taxes, whose responsibility was that?

A. Well, if in case of a shortage, they would notify us. And if there is overpayment, they would give us a notice, too.

Q. Who is "they"?

A. The tax office.

Q. Did you ever verify, did you ever examine the bills to see whether they were correct in your opinion?

A. If the receipts came back, I would have checked up together.

Q. Before you paid them?

A. We usually do.

Q. Who at your office examined the tax bills when they came in to see whether they were in order for payment?

A. I think the present one now is Miss Murata.

Q. And how long has she been with your firm?

A. She has been there ever since the latter part of 1941, I believe.

Q. And she was the one who had the respon-

(Testimony of Shigeo Matsuura.)

sibility for verifying these tax bill payments, is that right? A. That's right.

Q. Did she show you the receipted bills after you got them back?

A. I don't remember but if they brought it back we [136] should have it, though.

Q. And then what did you do with the tax bills?

A. We usually stamped that and then put it back together with the other bills and sent it back to Mr. Mikami. He used to bring over the books month by month, invoices and all.

Q. When you say "Mr. Mikami," you are only referring to the years 1941 to '47?

A. That's right.

Q. But prior to the year 1941, from 1935 to 1941, what did you do with the taxes?

A. We have it all together with the other invoices, vouchers, which Mr. Shoso Nii has.

Q. Do you have any present recollection of the name of the person who is shown as the taxpayer on the tax bill? Do you understand the question?

A. Yes. I believe it is shown as Shoso Nii, Kaneichi Nii.

Q. How long has it been shown as Kaneichi Nii? A. That I don't know.

Q. Do you recall any year when it was not shown as Kaneichi Nii?

A. I haven't seen any.

Mr. Gross: That's all.

The Court: Redirect? [137]



Mr. Kashiwa: No further questions.

The Court: The witness is excused.

(Witness excused.)

The Court: Next witness.

### SHOSO NII,

a witness in his own behalf, being duly sworn, testified as follows:

#### Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: Shoso Nii, 34 years.

The Court: Occupation?

The Witness: Merchant.

The Court: Residence?

The Witness: Waipahu, Oahu, Territory of Hawaii.

The Court: Citizenship?

The Witness: American.

The Court: Exclusively?

The Witness: Yes, sir.

The Court: Take the witness.

Q. What is your birthday?

A. January 3, 1914.

Q. How many trips did you take to Japan?

A. Two trips.

Q. When was the first trip? [138]

A. First trip was in 1921.

Q. Nineteen what? A. Twenty-one.

Q. When did you come back? A. 1923.

(Testimony of Shoso Nii.)

Q. And when was the second trip taken?

A. 1941.

Q. Prior to your leaving in 1921, what was your address at Waipahu?

A. Waipahu, Oahu, Territory of Hawaii.

Q. Any particular street number?

A. No street number. But I had a box number, 416, Post Office box.

Q. When were you married? How old were you when you got married?

A. Twenty-one years old.

Q. Prior to your going back to Japan this last time, did you reside with your wife here? When you got married,—where did you get married?

Mr. Gross: If the Court please, I'd like to let the witness answer the questions.

Mr. Kashiwa: I will withdraw that question.

Q. Where did you get married?

A. In Honolulu, Territory of Hawaii.

Q. In Honolulu? [139] A. Yes.

Q. And after that where did you live?

A. Waipahu, Oahu.

Q. Now, you testified that you went to Japan in 1941? A. Yes.

Q. When did you go to Japan?

A. June, 1941.

Q. At that time were you registered with the Selective Service? A. Yes.

Q. I show you this card here, Registration Certificate of Shoso Nii, Selective Service Card. Take

(Testimony of Shoso Nii.)

a look at it. (Handing a small card to the witness.)

Is that your card?           A. That is mine.

Q. This was issued to you by the Selective Service?           A. Yes.

Q. Your Draft Board?           A. Yes.

Mr. Gross: I would assume that everybody over the age of 21 had a card issued to them. (Mr. Kashiwa shows the card to Mr. Gross.)

Mr. Kashiwa: I offer this in evidence.

Mr. Gross: I object on the grounds that it is completely irrelevant to the issues here.

Mr. Kashiwa: Your Honor, in the pleadings there is a [140] denial of residence made in this case. Residence is one of the most important things in this case. My contention is that the residence of this Plaintiff was at Waipahu, and it shows.

The Court: Well, at best that might be some evidence of that fact, as of the date of the card. It wouldn't go much beyond that, would it?

Mr. Kashiwa: Then I will follow this up. He did a very peculiar thing. He left——

The Court: Let him testify. I will admit the card for whatever purpose it concerns.

dence as "Plaintiff's Exhibit E-1.")

(The card referred to was received in evidence as "Plaintiff's Exhibit E.")

[Printer's Note: Plaintiff's Exhibit E-1 is set out in full at page 443 of this printed Record.]

(Testimony of Shoso Nii.)

Q. Why did you go to Japan in 1941?

A. To visit my father who was very ill at that time.

Q. Now, did you receive leave from the Selective Service officials?

A. Yes, I got a permit from the Selective Service Board.

Q. For how many months?

A. For five months.

Q. Let me show you a letter here headed Permit of Local Board for Registrant to Depart from the United States. Have you seen that? (Showing a sheet of paper to the witness.)

A. Yes.

Q. Who issued that to you? [141]

A. Official at the local board at Waipahu.

Q. Waipahu board? A. Yes.

(Mr. Kashiwa shows document to Mr. Gross.)

Mr. Kashiwa: I offer this in evidence, your Honor.

Mr. Gross: I object to that on the same grounds, that it is irrelevant to the issues.

The Court: What bearing has this to the issues, the fact that the draft board gave him permission for five months to be absent from the country?

Mr. Kashiwa: That shows, your Honor, if he personally departed from here, he certainly wouldn't be a resident here. But even under the Selective Service law he was supposed to come back within five months, showing that he intended keeping his residence here.

(Testimony of Shoso Nii.)

Mr. Gross: If he had gotten to Japan and war broke out and he didn't return, I am quite sure that the only way the Selective Service Board would have gotten him was the way they finally did get him.

The Court: It may be received as part of the exhibit last received.

The Clerk: The last one would be "E-1" and this one would be "E-2."

(The document referred to was received in evidence as "Plaintiff's Exhibit E-2.") [142]

[Printer's Note: Plaintiff's Exhibit E-2 is set out in full at page 444 of this printed Record.]

Q. When did you arrive in Japan?

A. July 5, 1941.

Q. Then when did you get back from Japan?

A. November 8, 1947.

Q. Why weren't you able to come back?

A. Because there was no transportation at that time.

Q. Did you try to get transportation?

A. Yes.

Q. When was that?                    A. That was in 1941.

Q. What month?

A. It was either September or October. I don't remember quite clearly.

Q. How did you attempt to get transportation?

A. I saw the American Consul at Kobe to find out if there was any means of my getting back here.



(Testimony of Shoso Nii.)

Q. And what did you find out from the American Consul?

A. Since there was no boats coming from Japan, he told me to hold my papers until the transportation resumed.

Q. Was there any possible way of coming home?

Mr. Gross: I object. How can a witness know whether there was any possible way of coming home? He said that he tried. The question was, was there any possible way of coming home? For whom? For this witness or for——

The Court: I presume he means for this witness. It is [143] quite evident.

Q. Answer the question.

A. The American Consul told me that there might be a way of coming back through Shanghai and Manila but they weren't sure, and I told the hotel people in Kobe about it, and they weren't sure. So I let the thing go.

Q. You said American Consul. American Consul where?      A. At Kobe.

Q. Informed you?      A. Yes.

Q. By what?      A. By letter.

Q. You came back in November of 1947. Did you receive a permit to return?      A. Yes.

Q. By whom?

A. By the American Consul at Kobe.

Q. You came back on that permit?      A. Yes.

Q. What was your father's name?

A. Kaneichi Nii.

Q. Is he still living?      A. Yes.

(Testimony of Shoso Nii.)

Q. Now, there has been testimony that there are three children in the family. How many sons? [144]

A. One son and two daughters.

Q. And you are the only son? A. Yes.

Q. Where are the two daughters living?

A. In Japan now.

Q. What school did you go to?

A. Waipahu school.

Q. What was that, a high school or elementary?

A. Elementary school, eighth grade.

Q. How many grades were there in that school?

A. Eight grades.

Q. Did you graduate? A. Yes.

Q. After that did you go to any school?

A. I tried to enter Kalakaua Intermediate School but since my father wanted me to work in the store——

Q. Just a moment, now. This Kalakaua school, did you make an application there?

A. Yes, I took the examination and application at the same time.

Q. Were you accepted? A. Yes.

Q. Did you go to that school? A. No.

Q. Why didn't you go to that school? [145]

A. My father wanted me to work in the store.

Q. What store? A. In my father's store.

Q. Situated where? A. At Waipahu.

Q. Did you do that? A. Yes.

Q. Did he give any reasons why you should work at his store?

(Testimony of Shoso Nii.)

A. Yes. I was the only son and since our salesman who was doing all the work outside was ill——

Q. What is his name?

A. Miyasato. And he had to leave for Japan. I stayed in the store and helped my father.

Q. Did your father promise you anything?

A. Yes. He promised to give me everything that he owned in the Territory.

Q. When——

Mr. Gross: I make a motion to strike his testimony unless it is stated as to the time and place of the conversation, the date, and who was present, if anyone.

By Mr. Kashiwa:

Q. When was that promise made?

A. Well, he promised that quite often but the last time I recall was the last supper we had, the family had together. [146]

Q. When was the first time he made that promise?

A. Since I left, since I graduated from Waipahu School.

Q. Where was that conversation held between you and your father?

A. At the dinner table.

Q. Where?           A. At our home.

Q. Was anybody present there?

A. Yes, my mother and my wife were there.

Q. Was your wife there at that time?

A. Yes.

(Testimony of Shoso Nii.)

The Court: You were married when you got out of grammar school?

The Witness: No, the last time.

Q. Oh, you are talking about the last time?

A. Yes.

Q. How about the first time, when you got out of school in 1928?

A. Well, that was so far back that I don't recall exactly where he made that conversation. But we used to go to town in the same car together and he told me in the car, at home—well, he told me quite often about giving me the properties.

Q. What properties?

A. The whole property, everything that he owned here. [147]

Q. Where? Here in the Territory of Hawaii?

A. Yes.

Q. When would he give it to you, did he say?

A. When he died or when he leave this country. That means the Territory.

Q. About what year did you graduate elementary school? A. Around 1928.

Q. When did you receive the store?

A. In 1933.

Mr. Kashiwa: Your Honor, from now on there are a few documents here which are already admitted, and now——

The Court: You will have to pull them out. They will have to be given a marking in this trial.

Mr. Gross: Well, these admissions of fact have attached to them copies of all these documents with

(Testimony of Shoso Nii.)

the recording data on them, and I just wondered if at this time we couldn't agree or state into the record and give them exhibit numbers, refer to them by reference, and then we could probably shorten it. They are all made a part of this.

The Court: Well, I find that it is four o'clock. We will suspend for the day, and between now and tomorrow morning you can decide just in what manner you propose to handle that. It would seem to me that even though these documents are already in the file, they should be given identifiable markings for the purpose of the trial. So until tomorrow at nine we stand adjourned.

(The Court adjourned at 4:00 p.m.) [148]

Honolulu, T. H., Nov. 30, 1948, 9:00 o'clock a.m.

The Clerk: Civil No. 837, Shoso Nii, Plaintiff, versus Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, for further trial.

The Court: Are the parties ready?

Mr. Kashiwa: Ready.

Mr. Gross: Ready for the Defendant.

Mr. Kashiwa: Your Honor, Mr. Shoso Nii was on the stand. I have a very short witness, Mr. Kinney, who must be back in Waipahu by ten. He is a member of the bar. And I'd like to put him out of order.

The Court: Any objection?

Mr. Gross: No objection.

The Court: Very well.



## OLIVER KINNEY,

a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

## Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: Oliver Kinney, 49; I am an attorney, business agent.

The Court: Residence?

The Witness: 3014 Kiele Street, Honolulu. [149]

The Court: Citizenship?

The Witness: United States citizenship.

The Court: Exclusively?

The Witness: Yes.

The Court: Take the witness.

By Mr. Kashiwa:

Q. Mr. Kinney, did you at any time buy any property in Waipahu from Mr. Shoso Nii?

A. Yes, in 1941, the spring of '41.

Q. Where was that property situated?

A. At the intersection of Farrington Highway and Depot Road in Waipahu Village.

Mr. Gross: Excuse me. Farrington Highway and what?

The Witness: Depot Road, D-e-p-o-t.

Q. Do you know where the property in dispute in this case is situated?

A. Well, approximately it is across the Kapakahi Stream from the Depot Road in Waipahu Village.

Q. That is also known as Waipahu River?

(Testimony of Oliver Kinney.)

A. Well, it is known as Waipahu Stream, Kapakai Stream.

The Court: Kapakai?

The Witness: Kapakai. It is a little winding stream, so some call it a Kapakai stream.

Q. There is a map showing the old highway "A," and "C," the old, and "D," the Depot Road. Will you indicate on [150] this road where this property which you purchased was situated?

A. At this intersection. (Indicating on map.)

Q. Take the chalk and mark it out.

A. I take it that this goes out to Waianae.

Q. Yes.

A. And this goes up to Waipahu Village?

Q. Yes. A. And this is Kapakai street?

Q. Yes. A. It is this piece in here.

Q. The parcel marked "X"? A. Yes.

Q. In whose name was that property at the time of your purchase?

A. Well, I dealt with Shoso Nii, although the tax maps in the city here gave the name of Kaneichi Nii.

Q. Kaneichi? A. Kaneichi Nii.

Q. Now, will you give us the conversation you had with him at the time you made the deal?

A. Well, I saw a "For Sale" sign on the property and it gave the name of S. Nii as the party to refer to. So I stopped at the Nii store in Waipahu Village and met Shoso there and spoke to him about the property. And he quoted a price of \$3,300 for the parcel. It was about 15,198 square [151] feet, I

(Testimony of Oliver Kinney.)

believe, more or less. And after checking the title to the property I saw him again several days afterwards and told him that I thought there was some defect in the title. I mean there was a cloud in the title that I would have to clear that out by Land Courting the title which would cost me approximately \$500.00. And I would, therefore, offer him \$2,800 for the property. And he accepted the \$2,800, the offer.

Q. The deed was drawn from whom to whom?

A. The deed was drawn from Shoso Nii, as attorney-in-fact for Kaneichi, Kaneichi Nii to me as purchaser.

Q. Now, at the time the price was reduced, you said there was some Land Court application necessary to cost \$500? How long did it take for him to decide to sell it for \$2,800?

A. Well, when I went back there to him, I mentioned the figure \$2,800 to him.

Q. Yes?

A. After explaining to him that I would have to clear the title, and would, therefore, offer \$500 less than the price he quoted me. And he accepted it right there, \$2,800, after my explanation that I would have to spend that much money to clear the cloud.

Q. Did you pay the \$2,800? A. Yes.

Q. To whom? [152] A. To Shoso Nii.

Mr. Kashiwa: That's all.

The Court: Cross-examination?

Mr. Gross: No cross-examination.

The Court: You are excused.

(Witness excused.)

Mr. Kashiwa: Our interpreter is not here. The Waipahu Garage man is back with the books. I have instructed the interpreter to be back.

Mr. Gross: Suppose we proceed to get these documents into evidence now?

The Court: Yes. When we adjourned yesterday there was some discussion about marking as exhibits matters that were already in the record.

Mr. Gross: If the Court please, these are documents which we have asked Counsel to admit the genuineness of photostatic copies certified, and these documents have been admitted to be true and genuine by paper filed in this case by Counsel for the Plaintiff.

The Court: That is correct?

Mr. Kashiwa: Yes. And by you also. You stipulate?

Mr. Gross: Yes.

The Court: These documents are attached to——

Mr. Gross: They are attached to the affidavit.

The Court: Of Mark Huckestein. [153]

Mr. Gross: Of Mark Huckestein.

The Court: Filed March—filed August 30, 1948. And they are——

Mr. Kashiwa: First a deed from T. Ota to Kaneichi Nii of the property in dispute, dated December 27, 1932.

The Court: That may be marked—oh, recorded?

Mr. Kashiwa: Recorded in Liber 1189, pages 91 to 93.

The Court: That may become—who is offering it?

Mr. Kashiwa: I will.

The Court: That will become——

The Clerk: Plaintiff's Exhibit "F."

(The document referred to was received in evidence as "Plaintiff's Exhibit F.")

[Printer's Note: Plaintiff's Exhibit F is similar to Exhibit No. 2 set out at page 53 of this printed Record.]

Mr. Kashiwa: Bill of sale from Kaneichi Nii, of the K. Nii Shoten, to Shoso Nii, dated January 2, 1933, recorded in Liber—recorded in the Bureau of Conveyances, Liber 1205, pages 26 to 27.

The Court: That may become——

The Clerk: Plaintiff's Exhibit "G."

(The document referred to was received in evidence as "Plaintiff's Exhibit G.")

[Printer's Note: Plaintiff's Exhibit G is similar to Exhibit No. 1 set out at page 51 of this printed Record.]

Mr. Gross: The only question I have is whether these exhibits should be determined as Plaintiff's exhibits or Defendant's exhibits or the Court's exhibits.

The Court: It is too late now. [154]

Mr. Kashiwa: Deed from T. Ota to Kaneichi Nii, Liber 1451, pages 418 to 420, dated July 23, 1938.

The Court: That may become——



The Clerk: Exhibit "H."

(The document referred to was received in evidence as "Plaintiff's Exhibit H.")

[Printer's Note: Plaintiff's Exhibit H is similar to Exhibit No. 3 set out at page 57 of this printed Record.]

Mr. Kashiwa: Power of attorney of Kaneichi Nii to Shoso Nii, dated February 7, 1939, Liber 1503, pages 192 to 192—pages 190 to 192.

The Court: That may become——

Mr. Kashiwa: No, 193.

The Clerk: Plaintiff's Exhibit "I."

(The document referred to was received in evidence as "Plaintiff's Exhibit I.")

[Printer's Note: Plaintiff's Exhibit I is similar to Exhibit No. 6 set out at page 64 of this printed Record.]

Mr. Kashiwa: Power of attorney from Saku Nii to Shoso Nii.

The Court: That is the mother?

Mr. Kashiwa: Dated February 7, 1939, recorded in Liber 1503, from pages 194 to 197.

The Court: That may become——

The Clerk: Plaintiff's "J."

(The document referred to was received in evidence as "Plaintiff's Exhibit J.")

[Printer's Note: Plaintiff's Exhibit J is similar to Exhibit No. 5 set out at page 60 of this printed Record.]

Mr. Kashiwa: Certified copy of the Vesting Order, Order No. 9777, recorded in the Bureau of Conveyances, Liber 2070, [155] pages 61 to 64. This is dated September 12, 1947.

The Court: It may become.

The Clerk: Plaintiff's Exhibit "K."

(The document referred to was received in evidence as "Plaintiff's Exhibit K.")

[Printer's Note: Plaintiff's Exhibit K is similar to Exhibit "A" set out at page 13 of this printed Record.]

The Court: All right. Let the Plaintiff resume the stand.

### SHOSO NII,

a witness in his own behalf, having previously been sworn, resumed and testified further as follows:

#### Direct Examination

By Mr. Kashiwa:

Q. Now, referring to Exhibit "G," a bill of sale, which is in evidence in this Court, it shows that the store, the K. Nii store, was transferred to you on the third day of January on the second day of January, 1933. Do you know that fact? A. Yes.

Q. Did you ever see that bill of sale?

A. Yes.

Q. Now, at the same time what was done with the bank account?

A. It was all changed into my account.

(Testimony of Shoso Nii.)

Q. Where were these bank accounts?

A. Bank of Hawaii.

Q. What accounts were they over there? [156]

A. Savings and check accounts.

Q. Whose names were they in?

A. They were in Kaneichi Nii, my father's name, but changed to my name.

Q. Now, up to the time the store was transferred to you, from the time you graduated from elementary school and worked there, will you tell us what sort of work you did there?

A. I did practically everything that should be done in a store, especially taking orders and deliveries, getting goods from stores in Honolulu, and the major portion of the work of the store was done by me.

Q. What do you mean by taking orders?

A. We go out, house to house, and get——

Q. Where? A. Waipahu, camps.

Q. The plantation camps?

A. The plantation camps in Waipahu.

Q. And what did you do?

A. I took orders and made deliveries.

Q. Now, what percent of the sales in your store was by orders and deliveries?

A. Well, I can't say exactly how much but the most part of the business was in charge accounts. And that comes on orders that I took.

Q. Was your father able to drive a car? [157]

A. No.

Q. Now, when you started to work for the K.

(Testimony of Shoso Nii.)

Nii Store when you finished elementary school, did you drive a car?      A. Yes.

Q. What kind of a car was that?

A. A Ford truck.

Q. Did you have a license at that time?

A. Yes.

Q. Now, you know the K. Nii Store, where it is now?      A. Yes.

Q. Where it is now situated, where you are operating business right now, don't you?      A. Yes.

Q. That store you started to work in in 1928 when you finished your elementary school, was that the same store?      A. Yes.

Q. Did you make a map of the location of the store?      A. Yes.

Q. You have it there with you?

A. Yes. (Handing a sheet of paper to Mr. Kashiwa.)

Q. And this map shows the new highway, the old highway, and the Depot Road and your S. Nii store?

A. Yes.

Q. And it shows the property in dispute and the property sold to Kinney? [158]      A. Yes.

Q. And it is all shown on the map?      A. Yes.

(Mr. Kashiwa shows map referred to to Mr. Gross.)

Mr. Gross: I object to it as being irrelevant.

The Court: What is the purpose?

Mr. Kashiwa: Your Honor, to give an idea——

The Court: Illustrative?

Mr. Kashiwa: Yes, your Honor.

The Court: It may become for illustrative purposes only an exhibit.

The Clerk: Plaintiff's Exhibit "L."

(The map referred to was received in evidence as "Plaintiff's Exhibit L.")

[Printer's Note: Plaintiff's Exhibit L is set out in full at page 446 of this printed Record.]

Q. Now, that store you worked in was the same store? A. Yes.

Q. What is the size of that store?

A. It has a frontage of about 75 feet.

Q. And the depth?

A. A depth of about 40.

Q. And what about living quarters?

A. We have the living quarters in the back of the store, joined together with the store.

Q. Do you own the land on which that store is situated? A. No. [159]

Q. What was it? A. Rental property.

Q. From whom?

A. From Waipahu Garage.

Mr. Gross: Did you say it was a rental from the Waipahu Garage?

The Witness: Yes.

Q. Now, during the years back from 1928 to 1933 when you got the store, what hours in the morning did you open and when did you close the store?

A. We opened our store around six in the morning and closed about eleven in the evenings.



(Testimony of Shoso Nii.)

Q. And was that for six days a week or seven days?

A. It is right through Sundays, too.

Q. Through Sundays? A. Sundays, too.

Q. Who did the buying for the store after you got into the store? A. I did.

Q. Where did you buy things from?

A. From the wholesalers in Honolulu.

Q. And who delivered the merchandise?

A. I did myself.

Q. Now, for example, taking one day in that period of time, will you give us your usual routine of work, what you [160] started to do in the morning and ended up with at night?

A. The first thing in the morning we clean up, I clean up the store. Then——

Q. Wait a minute. Clean up?

A. Sweeping and getting ready for the day, and had breakfast; then went to Honolulu to get our merchandise, and I usually came back around, before or right after lunch; then had lunch; then I went out in the camps to take orders and make deliveries that I took the day before. That would take me up to around eight to nine o'clock in the evening. And then I stayed in the store until closing time.

Q. When did you have supper?

A. I had supper after closing, usually around eleven, or ten or eleven o'clock.

Q. And you did that routine from the time you—

A. From the time I finished school.

(Testimony of Shoso Nii.)

Q. Up to when? A. Up to 1941.

Q. When you went to Japan? A. Yes.

Q. Now, after your father turned over the store to you and you said he turned over all the bank money with the savings or checking account to you, who supported your father? A. I did.

Q. Now, where did your father live at that time?

A. He lived together with me.

Q. Where?

A. At Waipahu in the same home.

Q. In back of the store? A. Yes.

Q. When you received that store in 1933, were you married? A. No.

Q. How old were you then? A. I was 19.

Q. No, no. When were you born?

A. January 3, 1914.

Q. Yes, you were 19. A. 19.

Q. That's right. Now, the checking account at the Bank of Hawaii which was transferred to you, after it was transferred to you who signed the checks? A. I did.

Q. Now, your father's support after the store was turned over to you, who supported him?

A. I did.

Mr. Gross: He has answered that question once.

Mr. Kashiwa: All right.

Q. Now, when he went back to Japan, who bought his steamship ticket? A. I did. [162]

Q. Now, who lived with you at the time the store was transferred to you? Who in your family lived with you?

(Testimony of Shoso Nii.)

A. My father, my mother and my youngest sister.

Q. Is she the Florence who is mentioned in that deposition?      A. Yes.

Q. What is her Japanese name?

A. Takako.

The Court: Once again?

The Witness: Takako, T-a-k-a-k-o.

The Court: Proceed.

Mr. Kashiwa: There is something else about the interrogatories that I'd like to have. I was asking Mr. Adachi about it.

Q. What year were you married?

A. In 1934.

Q. And what was the maiden name of your wife?

A. Kiyoe.

Q. Is she the same wife you have now?

A. Yes.

Q. Now, at the time just prior to your marriage to her, where was she a resident of?

A. Japan.

Q. Will you tell us the circumstances under which you got married? [163]

Mr. Gross: If the Court please, I want to object to this whole line of questioning on the grounds that it is irrelevant to the issues here.

The Court: Interesting though it may be, what is the purpose?

Mr. Kashiwa: Your Honor, here again at the time of this marriage—an absurd age for a young

(Testimony of Shoso Nii.)

man to get married—I will offer to prove that he never knew her prior to the marriage.

The Court: So what?

Mr. Kashiwa: This was a matched marriage and again the father induced him to get married early because he had all this responsibility, all this responsible business which was all going to be turned over to him. And I think it is relevant, your Honor.

Mr. Gross: It is argumentative but I don't think it is relevant to the issues.

The Court: All right. Go ahead.

A. I didn't know this girl until about a week before she landed in Honolulu. My father told me that since I was going to get everything that he owned here, he ordered me to settle down because I had lots of arguments by then with him about leaving the store and getting in school or going out somewhere to work for myself. But since he said that he was giving everything to me and he wanted me to settle down by getting married to this girl, I did what he told me to. [164]

Q. Now, between the time, from the time you graduated from the elementary school up to the time you received the store, did you receive any wages or compensation? A. No.

Q. Now, there is a deed in the record here, Exhibit "F", Plaintiff's Exhibit "F", purchased by your father from T. Ota of the property in dispute here, on the 27th day of December, 1932. Is that the property in dispute in this case? A. Yes.

(Testimony of Shoso Nii.)

Q. You know about your father's purchase of that property?      A. Yes.

Q. Let me show you a map which purports to be a map of that property. (Showing a blueprint to the witness.)      A. This is the property.

Mr. Gross: Would you mind if I saw the exhibit before you offer it?

(Mr. Kashiwa shows blueprint to Mr. Gross.)

Q. Will you mark the property here which was bought by your father with this deed, mark it in red?

(Witness writes on blueprint.)

Mr. Kashiwa: I offer this in evidence, your Honor.

Mr. Gross: It is objected to on the grounds that it is irrelevant. There is no evidence as to who prepared it. It is just handed in as a piece of paper. There is already a [165] map in evidence which was admitted in evidence for the purpose of illustration by the Court, and this is probably just an accumulative thing. And if that other map is what it purports to be——

Mr. Kashiwa: This is just for illustrative purposes. It is a larger map of the parcel itself.

The Court: All right. It may be received as illustrative of the shape, size and description. It is not accepted as accurate should any question of dimensions, and so forth, become an issue.

The Clerk: Plaintiff's Exhibit "M".

(The map referred to was received in evidence as Plaintiff's Exhibit "M".)

[Printer's Note: Plaintiff's Exhibit M is set out in full at page 447 of this printed Record.]



(Testimony of Shoso Nii.)

Q. Now, taking this red pencil here, will you—at the time of the purchase of this property in 1932, December, will you indicate, will you tell us whether that was an improved or unimproved lot?

A. It was unimproved lot but had an old house in there, two-story house.

Q. Let me put it this way: At the time of the purchase in December, 1932, was there a house on it or was there not a house on it?

A. There was one house. [166]

Q. All right. Will you indicate that house with your red pencil on that sketch and mark it "A". (Witness writes on map.) Now, after your father bought the property, what improvements were put on there?

A. I had two buildings put in there.

Q. Will you mark those buildings on that map?

Mr. Gross: I move to strike the answer on the grounds that it was not responsive to the question. The question was, what improvements were put upon the property? He said, "I had two buildings put on there." He didn't ask him what he had done.

The Court: That's right. The answer may be stricken.

Mr. Kashiwa: All right.

Q. How many buildings were put on that property after your father bought it?

A. I had two buildings.

Q. How many buildings were put on there?

A. Two buildings were put on there.

Q. All right. You mark those buildings on that map, and mark it "B" and "C". (Witness writes on

(Testimony of Shoso Nii.)

map.) Now, will you describe the buildings "B" and "C", what type buildings they were?

A. It is two-bedroom cottage.

Q. You mean each house?

A. Each house has the same amount of rooms, two bedrooms, [167] one parlor and kitchen and that's all.

Q. How about a bathroom?

A. A bathroom and toilet outside.

Q. Outside? A. Outside.

Q. Will you locate the bathroom and the toilet on this map here and mark it "D"? (Witness writes on map.) Now, when your father bought this property in December, 1932, buildings "B", "C" and "D" were not on the property? A. No.

Q. That was later put on that property?

A. Yes.

Q. Now, you stated that when your father turned over the store to you, he turned over all his money to you, the bank account? A. Yes.

Q. Who paid for all these improvements?

A. I paid for all the improvements through the store.

Q. Through the S. Nii Store?

A. S. Nii Store.

Q. Yesterday Mr. Tsumoto testified that you paid him for some lumber. A. Yes.

Q. Did you? A. Yes. [168]

Q. What was the lumber for?

A. That was for building repairs.

Q. Now, was there any other substantial work

(Testimony of Shoso Nii.)

done on this property in dispute here after your father bought it?

A. We had, I had a stone wall around the property.

Q. On which side of the property?

A. On three sides.

Q. Why did you do that?

A. Because the river at that time was overflowing so often that we had to have the banks higher and firmer.

Q. Will you indicate the stone wall built around this property? Draw it in round dots. (Witness writes on map.)

Mr. Kashiwa: Let the record show that the stone wall is in green.

Q. Now, about how high was that stone wall built?

Mr. Gross: I object to this as being irrelevant, how high the stone wall was. I think we are so far away from the issues——

By Mr. Kashiwa:

Q. And who paid for that stone wall?

A. Through the S. Nii Store.

Q. Did you do any work on that stone wall?

A. Yes.

Q. Mr. Kinney testified here that certain property was sold to him by you. Which property was that? [169]

A. That was——

Mr. Gross: If the Court please, I would like to object to this question. Mr. Kinney testified that the property concerning which he testified was not the property in issue here. And he marked it over here to indicate it was not the property in issue. I am

(Testimony of Shoso Nii.)

just trying to shorten the record. I think it is completely irrelevant.

Mr. Kashiwa: Your Honor, the purpose of this proof is to show your Honor that he had absolute control of this, of the property left in Hawaii by the father, and he sold it even at a price without determining whether it was O.K., whether it was all right with his father. He just made the deal and sold it. And I'd like to get out of this witness how—I will offer to prove that Mr. Shoso Nii kept the entire purchase price to corroborate the evidence of gift in this case, your Honor.

Mr. Gross: If the Court please, there is now in the record the power of attorney running from the father and mother to the son. I believe that an examination of that power of attorney will show that it is a general power of attorney. So that this is just accumulative and doesn't add anything to what recorded documents already show.

The Court: I see no need of going over that which Mr. Kinney testified to. I haven't any reason to doubt that.

Mr. Kashiwa: Your Honor, but the only thing I want to [170] prove out of this witness is what he did with that money.

The Court: You address your question to that aspect of it. That will be a little different.

Mr. Kashiwa: I will withdraw the former question.

Q. Now, with respect to the property you sold to Mr. Kinney in 1941, what did you do with the money?

A. I put it in my bank account.

(Testimony of Shoso Nii.)

Q. Which one?

A. The store, S. Nii Store.

Q. Now, those buildings in the back, 'D', 'C' and 'E', roughly how much did they cost you?

A. About three thousand dollars.

Q. Now——

The Court: Total?

The Witness: Total.

Q. ——your father had other rental property, did he not?      A. Yes.

Q. Where were these properties situated?

A. There were two properties in Waipahu.

Q. Where were they?

A. One is in the back of my store, about 400 yards away. And another is opposite the Waipahu Ball Park.

Q. After your father turned over the business to you in 1933, who collected the rentals on these properties?      A. I did. [171]

Q. Now, these houses, "A", "B" and "C" shown on the map here, Exhibit "M", map of the premises in issue, were these houses "A", "B" and "C" rented?      A. Yes.

Q. And after the business was turned over to you in January, '33, who collected the rentals on those properties?      A. I did.

Q. And who paid all the real property taxes on all of the properties?      A. I did.

Q. Who paid the gross income taxes on the rental?

A. I did.

Q. And the net income tax?      A. I did.

Q. In 1938 in the tax returns here—I will withdraw that.



(Testimony of Shoso Nii.)

Mr. Gross: If the Court please, I'd like to make a motion to strike from the record all of this witness' testimony as to the payment of taxes on the grounds that it is not the best evidence; that the best evidence would be the receipted tax bills or the receipts which he got. It is a self-serving statement.

The Court: The objection comes late.

Q. Shoso, all during the period from 1941 to 1947 when you were in Japan, where did you consider your residence to be? [172]      A. Waipahu.

Mr. Gross: If the Court please, he is requesting this man to testify as to a state of mind which existed in the past. I think that the question of what his residence was can be best proven by other than this man's state of mind. It is a self-serving statement.

Mr. Kashiwa: Your Honor, this objection about self-serving, if somebody testifies as to what he says, that may be so. But he can testify as to where his home was, your Honor.

The Court: The objection is overruled.

A. Waipahu, Oahu, Territory of Hawaii.

Q. How many children do you have now?

A. Four children.

Q. Where were your children born?

A. Two were born in Waipahu and two were born in Japan.

Q. Now, in 1921 you mentioned that you went to Japan.      A. Yes.

Q. How old were you?

A. I was around seven years old.

Q. And how long did you stay there?

(Testimony of Shoso Nii.)

A. Two years.

Q. At that time did your father have any property there?

A. Yes, he built a home and had fields over there.

Q. What were the fields used for? [173]

A. Rice patches and ordinary farming.

Q. Now, how many acres of these fields did he have?

A. He had about three acres.

Q. And will you describe his home, the one he built?

A. It was——

Mr. Gross: If the Court please, I object to this on the grounds that it is completely irrelevant to the issues here as to whether even the issues as formed by the pleadings by counsel for the plaintiff, as to whether there was a gift of the parcel which was vested by the Alien Property Custodian. The description of his father's house in Japan, I can't see its relevancy to that issue.

The Court: I am not particularly interested in what kind of house it was. You have established that he did have something there. I think the objection is good.

Mr. Kashiwa: Where is the second deed, from Ota to Kaneichi Nii?

The Clerk: The second deed is "H".

The Court: "H".

Q. On July 23, 1938, the date when Exhibit "H" was executed, there is evidence that shows that T. Ota sold to Kaneichi Nii a parcel of property in Wai-pahu. Referring to Exhibit "M" here, the sketch here, will you show us which property that was?

A. This long strip here. (Indicating.) [174]

(Testimony of Shoso Nii.)

Q. Is that the one marked in yellow pencil?

A. Yes.

Q. Will you tell us why that was purchased?

A. Because that was a right of way for the property that Ota had in the back, and if the property in the back were sold to somebody else then the right of way would be taken away from us and we would be, it would be very inconvenient getting in and out from my own property.

Q. Who paid for that land?           A. I did.

Q. How much did you pay?

A. I paid \$175.

Q. Now, I notice that the deed is taken in the name of Kaneichi Nii. Why was that taken in his name when your father was in Japan?

A. Because the right of way was together with a bigger lot.

Q. And whose lot, whose name was the bigger lot in?           A. In Kaneichi Nii's name.

Q. Now, if these properties were all given to you, Shoso, and you had the power of attorney in 1939—it is the record here—why wasn't it changed over to your name?

Mr. Gross: Objected to as being argumentative and a leading question.

The Court: Sustained. [175]

Mr. Kashiwa: No further questions.

The Court: Before cross-examining, before I allow you to cross-examine, I am going to take a recess.

(A short recess was taken at 9:55 a.m.)

(Testimony of Shoso Nii.)

After Recess

The Court: Cross-examination.

Cross-Examination

By Mr. Gross:

Q. Mr. Nii, you are the plaintiff in this lawsuit?

A. Yes.

Q. Do you know an attorney in the City of Honolulu by the name of Masaji Marumoto?

A. Yes.

Q. Did you consult him shortly after you came back from Japan in 1947? A. Yes.

Q. Did you tell him then that your father had made a gift of this property to you? A. Yes.

Q. How many years were you in Japan on your last trip? A. About six and one-half years.

Q. What did you do when you were in Japan?

A. I helped my father on his farm.

Q. Did you serve in the Japanese Army?

A. No. [176]

Q. Was any pressure put upon you to get you to serve in the Japanese Army? A. Yes.

Q. What did you state?

A. I saw the police station at our village and showed them that I came back from Hawaii on leave through the local board, and showed them the papers that I had with me.

Q. They didn't intern you? A. No.

Q. Did they molest you in any way?

A. Not exactly.

Q. Did they disturb your wife or your children?

(Testimony of Shoso Nii.)

A. No, I don't think so.

Q. In other words, they knew you were an American citizen and they permitted you to go about freely, is that right?

A. Yes.

Q. What did you use for money to live on when you were over there?

A. I brought some money but I spent most of it during the first part of the year that I stayed in Japan, and the rest my father supported me.

Q. How many years did your father support you when you were in Japan?

A. About five, five years.

Q. How many people in your family, your immediate family, [177] did your father support when you were in Japan?

A. Six.

Q. Yourself, your wife and four children, is that correct?

A. Yes.

Q. Did you have to report to any police while you were in Japan?

A. I only saw them once when I showed them the papers.

Q. Your wife was a Japanese subject, was she not?

A. No.

Q. What was your wife, an American?

A. American citizen.

Q. She had been born in Japan?

A. She was born in Hawaii.

Q. Your wife was born in Hawaii?

A. Yes, Waipahu, Oahu, Territory of Hawaii.

Q. Did I misunderstand your direct examination? Didn't you testify that your wife was from Japan?

A. She was born here but went to Japan when



(Testimony of Shoso Nii.)

she was—well, I don't know the exact age but when she was small.

Q. Of what country was she a citizen at the time that you married her?

A. American citizen.

Q. Your mother is Japanese? A. Yes.

Q. Your father is Japanese? A. Yes.

Q. Two of your children were born in Japan, is that correct? A. Yes.

Q. You are the only member of your family, of your father's family, the brothers and sisters, who is not living in Japan, is that correct?

Mr. Kashiwa: Your Honor, I didn't understand that question.

The Court: It isn't too clear. Restate it, please.

Q. Of your father, your mother and your sisters, are you the only member of the family that is not living in Japan? A. Yes.

Q. And they have all been living in Japan since 1935, is that correct? A. No.

Q. Which ones have not been living in Japan?

A. My youngest sister was in Hawaii before that time.

Q. When did she go to Japan?

A. She went to Japan in 1941 with me.

Q. How many of you went to Japan in 1941?

A. We all went, my whole family went to Japan, but my wife and the two children who were born here went to Japan about a month before I went to Japan. [179]

Q. So that after you arrived in Japan there were

(Testimony of Shoso Nii.)

no members of your family remaining in the Territory of Hawaii, is that correct?      A. Yes.

Q. Did you hear the answers to the interrogatories which your father gave in the month of October of this year before the American Consulate in Japan?

A. I heard about it yesterday in this courtroom.

Q. How much money did your father say that he took to Japan with him when he went?

A. A hundred thousand yen.

Q. Do you know——

Mr. Kashiwa: I object to that question, your Honor. The statement was not to that effect.

Mr. Gross: I will read the question and answer to him.

Mr. Kashiwa: All right.

Mr. Gross: Question No. 15: "That time . . ."—meaning at the time when your father went to Japan in 1935—"At that time about how much was such property in Japan together with what you brought back from Hawaii on your last trip worth in Japanese yen?" And the answer, "About 100,000 (One hundred thousand) yen, 1935 valuation."

Q. Do you know how much that would be in American dollars approximately in 1935?

A. Well, I don't remember the exchange rate at that [180] time.

Q. Well, your best recollection in 1935, how much was a hundred thousand yen worth?

A. Around \$30,000 in American money.

Q. Do you remember this question, question No. 13——

(Testimony of Shoso Nii.)

The Court: Put to the father?

Q. —put to your father in these interrogatories?

“What did you do with all of your real properties in Hawaii when you last left Hawaii for Japan?”

Do you remember your father’s answer?

The Court: That is a question and answer?

Mr. Gross: That is a question.

The Court: What number?

Mr. Gross: No. 13.

Q. Do you remember your father’s answer?

A. I don’t recollect.

Q. I will read it to you. “After returning to Japan, I made a power of attorney to Shoso Nii at the American Consulate in Kobe about December, 1935, to dispose of my properties in Hawaii.” Do you recall that now?

A. Yes, I sent him the papers to have him sign, to have him sign there.

Q. When did you send him the papers?

A. Well, I don’t remember exactly when but it was about a month before he signed it. [181]

Q. In what year? A. In 1938.

Q. You sent him the papers in 1938?

A. Well, I don’t remember exactly but I know that I sent him the papers.

Q. Who prepared those papers for you?

A. Omurei accounting office.

Q. What man over there? A. Omurei.

Mr. Gross: The Court seems to be——

The Court: I am wondering about an accountant preparing legal documents.

(Testimony of Shoso Nii.)

Mr. Gross: That apparently is an accepted practice.

The Court: It had better change.

Mr. Kashiwa: That is why there is all this trouble, your Honor.

Mr. Gross: Quite possible.

Q. Did you ask the man Omurei in the Omurei accounting office to prepare those papers for you?

A. Yes.

Q. What did you tell him?

A. Since all the property here was left, given to me by my father, I wanted some, well, some kind of document that I can do anything with it, sell or buy or dispose of it.

Q. What did he say to you? [182]

A. Well, he told me to make out a power of attorney and have my parents sign it.

Q. When you went to Japan in 1941, you knew that title to the real estate which is the subject matter of this lawsuit was in your father, did you not?

A. Yes.

Q. You were in Japan from 1941 to 1947, were you not? A. Yes.

Q. Did you at any time ask your father to give you some document which would transfer title to this real estate to you? A. No.

Mr. Gross: That's all.

The Court: Redirect?

Mr. Kashiwa: The only thing, Mr. Gross, is the signature. Will you stipulate as to the signature on the claim?

Mr. Gross: On the claim?

Mr. Kashiwa: Let me show you Plaintiff's Exhibit "A-1" on which appears the signature of Shoso Nii. Is that your signature?

The Witness: Yes.

The Court: Are you through?

Mr. Kashiwa: Yes.

The Court: The witness is excused.

(Witness excused.) [183]

The Court: Next witness.

Mr. Kashiwa: Your Honor, the interpreter we used yesterday is not here, but I am perfectly willing to use Mr. Adachi and Mr. Adachi has volunteered to help.

The Court: All right.

(Masayuki Adachi was sworn to act as Japanese interpreter.)

EISUKE IKINAGA,

a witness in behalf of the plaintiff, having previously been sworn, resumed and testified further as follows:

Redirect Examination

The Court: You are Eisuke Ikinaga?

The Witness: Yes, Ikinaga.

The Court: I remind you that you are still under oath. All right. Take the witness.

By Mr. Kashiwa:

Q. Mr. Ikinaga, yesterday we asked you to bring the stock book and the books showing the payment of dividends. Did you bring that?

A. Yes, I did.

Q. You have the stock book there?



(Testimony of Eisuke Ikinaga.)

A. Yes.

Mr. Gross: If the Court please, may I reiterate my objection to this whole line of questioning at this time, on the grounds that the stock is not part of the subject matter of [184] this lawsuit?

The Court: Yes. Your objection continues to this line.

Q. May we see the stock book?

A. Yes. (Showing a book.) Shall I offer this?

Q. Will you look at the stock book and see when the three hundred odd shares held by Kaneichi Nii were transferred to Shoso Nii?

A. April 9, 1939.

The Court: What about that date?

Mr. Gross: April 9, 1939.

The Court: What is the significance of it?

Mr. Kashiwa: That is the date of the transfer of the shares from Kaneichi, from the father to the son.

Mr. Gross: Let's put it as the date of the re-issuance of the certificates in the name of the son. By Mr. Kashiwa:

Q. Who endorsed the stock in that transfer?

A. Please look at this because I can't read English.

Mr. Gross: The record may show that the witness——

The Court: This is a stipulation?

Mr. Kashiwa: I will stipulate to that.

Mr. Gross: That the witness has produced what purports to be the stock transfer book of Waipahu Garage, Limited, a Hawaiian corporation, and that

(Testimony of Eisuke Ikinaga.)

in that book certificate number 11 for 234 shares of capital stock of Waipahu Garage, [185] Limited, dated September 1, 1928, is issued in the name of Kaneichi Nii; and that across the face of the certificate there is written in red ink the word "cancelled"; and below the words "New certificate issued to Shoso Nii, 4/7/39"; and that this certificate on the back, on the reverse side, has typed in the words "Kaneichi Nii by" and then a signature "Shoso Nii".

Mr. Kashiwa: We acknowledge that that is the signature of Shoso Nii.

Mr. Gross: And further, that in the same stock transfer book certificate No. 24, for 77 shares of the capital stock of Waipahu Garage, Limited, dated November 28, 1934, is issued in the name of Kaneichi Nii, and that on the reverse side—excuse me, that across the face of that certificate the words are written in red ink, or the word written in red ink "Cancelled"; underneath that, "New certificate issued to Shoso Nii"; and that on a stub for certificate No. 27, dated 4/7/39, there is written in red ink the words that the stub shows the issuance of the certificate for 311 shares in the name of Shoso Nii and is written in red ink across that stub "Cancelled. Transferred to Alien Property Custodian, 10/10/46, stock No. 37".

The Court: Very well. Proceed.

By Mr. Kashiwa:

Q. Did you bring your entry book showing the dividends paid by your corporation? Do you have it there? [186]

A. Yes.

Q. In 1935 did your company pay any dividends?

(Testimony of Eisuke Ikinaga.)

A. We did not declare any dividends in 1935.

Q. Did you declare any dividends in 1936?

A. Yes, we paid dividends of 35 and 36, of 35.

The Court: Thirty-five cents?

The Witness: No, profit for the, profit for 1935 we paid in 1936.

Q. Now, after 1936 did you declare dividends continuously? A. Yes.

Q. Now, in 1936 to whom did you declare dividends due on the three hundred shares belonging to Kaneichi Nii?

Mr. Gross: Excuse me. I'd like to have that question repeated?

(The reporter read the last question.)

Mr. Gross: I object to that question on the grounds that he has the records here, and let the records speak for themselves. That is the same thing we had up yesterday.

The Court: I think that is.

Q. Will you open the stock record book, dividend stock payments for 1936. Now, on examining that book, to whom was the 1936 dividend paid?

A. We paid twice. First one paid to Kaneichi Nii.

Mr. Gross: I object, if the Court please, further. I'd [187] like an opportunity to examine this. Maybe we can shorten this. I am perfectly willing that a photostatic copy of this page be introduced as an exhibit.

The Court: Well, see if you can stipulate as to what it shows.

(Testimony of Eisuke Ikinaga.)

Mr. Gross: I'd like the record to show that in view of the difficulty of translation of this witness, that the parties have produced a book which he states is the stock dividends of the corporation, of the Waipahu Garage, Limited; and that on a page which is numbered No. 226—at this time I'd like counsel to agree to furnish photostatic copies for the record—that on page No. 226 there is—

The Court: Start all over again. It is stipulated by counsel, subject to counsel for the plaintiff supplying photostatic copies of these pages—that the book which the witness has produced shows on page—

Mr. Gross: 184, in the month of August, 1936, under a heading "Dividends payable", \$61.89 paid to Kaneichi Nii. And on page 226, December, 1936, shows the sum of \$92.83 paid to S. Nii. That on page 355, in December, 1937, it shows \$185.67 paid to S. Nii. That on page 484, in December, 1938, it shows \$185.67 paid to S. Nii.

Mr. Kashiwa: Dividends.

The Court: Yes, these are all dividends, all relate to dividends. [188]

Mr. Gross: That on page 608, December, 1939, it shows \$185.40 paid to Shoso Nii. That on page—a new series apparently—No. 114, December of 1940, it shows \$185.40 paid to Shoso Nii.

Mr. Kashiwa: That's all.

Mr. Gross: Anything else you want from this book?

Mr. Kashiwa: That's all.

By Mr. Kashiwa:

Q. Mr. Ikinaga, could you lend this book to Mr.

(Testimony of Eisuke Ikinaga.)

Shoso Nii at a later time so he may take pictures of it? A. Yes.

The Court: He understands English now.

Mr. Kashiwa: I will agree to file the photostats later.

The Court: All right.

Q. Now, Mr. Ikinaga, in 1936, December, 1936, up to 1939 when the stock issued to Kaneichi Nii was changed to Shoso Nii, the records show that you paid the dividends to Shoso Nii. Why did you do that?

A. I don't recall the details at that time but since Kaneichi Nii told me that all of the stock was transferred to Shoso Nii, believing his statement, I issued the check payable to Shoso Nii.

Mr. Kashiwa: That's all.

Mr. Gross: Let me try to get along without you, Mr. Adachi. [189]

#### Recross-Examination

By Mr. Gross (in English):

Q. Mr. Kaneichi Nii was the President of the Waipahu Garage, Limited, was he not?

A. I think at that time he is President of Waipahu Garage.

Q. Was he the President of the Waipahu Garage, Limited, in 1935 when he went back to Japan?

A. Yes, I think until that time. I don't remember so good.

Q. What is your best remembrance on that?

A. I remember he went to Japan. That is where we get another President.

Mr. Gross: Is the Court able to understand the answer?



(Testimony of Eisuke Ikinaga.)

The Court: I might if I could hear him, but I can't hear him.

Mr. Gross: You will have to keep your voice up. The Court has to hear what you are saying. Can you hear me?

The Witness: My English is very poor.

Mr. Gross: Your English is good enough. It is good enough for us. Now you just speak out loud.

The Witness: All right.

Q. We want to know when Kaneichi Nii quit being President of the Waipahu Garage, Limited?

A. I think that he went to Japan, at that time quit [190] President of Waipahu Garage. That is what I think.

Q. You think that he quit being President of the Waipahu Garage at the time he went to Japan in 1935, is that right?

A. Right or not, I just remember that much.

Q. Does Waipahu Garage have a lawyer that represents them? A. What you say?

Q. Does the company have a lawyer?

A. Yes, at that time we have no lawyer.

Q. When did you first get a lawyer?

A. I remember 1941 or '42 after war start we get a lawyer.

Q. Who organized the company for you when you organized it? Did you use a lawyer then?

A. You told—I cannot understand.

Q. I will try to rephrase the question. When this company, the Waipahu Garage, was originally

(Testimony of Eisuke Ikinaga.)

organized, did you have a lawyer to help you organize it?      A. Please——

Q. You want that to be interpreted?

The Court: All right. Put the interpreter back to work. (Through the interpreter.)

A. At that time we organized the company a man named Watanabe helped to organize the company, but I do not know if he was a lawyer or he was associated with some other lawyer [191] for drafting such papers.

The Court: What particular Mr. Watanabe?

The Witness: At this time I don't remember if he is alive or dead.

Mr. Kashiwa: Your Honor, we have an attorney in town by the name of Watanabe but he is much younger. I think he was born on or about 1916.

Q. (By Mr. Gross): Did you ever use a lawyer in the company from the time it was organized up to 1941 or '42?

A. The company was organized latter part of 1916 or early part of 1917 in the name of Waipahu Repair Shop, Waipahu Auto Repair Shop. Later it was changed to Waipahu Garage. And at that time I believe we hired a lawyer.

Q. Who became President of the Waipahu Garage, Limited, after Kaneichi Nii went back to Japan?      A. Hashimoto Rinichi.

The Court: The last name is what?

The Witness: R-i-n-i-c-h-i.

Q. What year did you become President of the Waipahu Garage, Limited?

(Testimony of Eisuke Ikinaga.)

A. I don't remember exactly but I believe three or four years ago.

Q. Who sent the dividend checks which are referred to in those books? [192]

A. Yes, I did.

Q. And those dividend checks were given to Shoso Nii because Kaneichi Nii had asked that, is that right?

A. Mr. Kaneichi Nii told me that I transfer all my shares of the company to Shoso Nii; therefore, I issued checks, I gave the check to Shoso Nii.

Q. From 1936 to 1941 did you know who the stockholders of your company were?

A. I think I know because that stockholders were the same, almost same as of '36 and '41.

Q. Did you understand that the law required you to pay dividends to the stockholders of record in your record book?

Mr. Kashiwa: Your Honor, I object to that. That is argumentative, your Honor.

Mr. Gross: I am asking him whether he understood, and this is cross-examination.

The Court: I don't know what office this man held in the corporation at the time you are talking about.

Mr. Gross: All right, let's ask him.

Q. What office did you hold in the Waipahu Garage for each of the years 1935 to 1941, inclusive?

A. I was a vice-president.

The Court: Who was the treasurer?

Q. Who was the treasurer of the company?

(Testimony of Eisuke Ikinaga.)

A. Shigeru Serikaku, I think. [193]

Q. Serikaku? Did you tell the Treasurer to draw the checks payable to Shoso Nii?

A. I did not give instructions at each time but based on instructions I had from Kaneichi Nii I told the Treasurer to issue a check. Also I had the approval of the stockholders meeting.

Mr. Kashiwa: Directors meeting?

A. Directors meeting, that's right.

Q. When you say that you had the approval of the directors meeting, what do you mean?

A. Mr. Kaneichi was the President of the corporation. Since he was resigning, we had that meeting.

Q. Who are your present lawyers?

A. Mr. Tsukiyama.

Q. Has he ever seen this stock transfer book?

A. I don't remember.

Q. Was Mr. Tsukiyama present at the last meeting of the stockholders?      A. No.

Q. How long had you and Kaneichi Nii known each other?

A. I went to Waipahu in 1914. At that time Mr. Kaneichi Nii had a small store, and also he had an express business. And at about the same time I opened a blacksmith shop. From that time on I have known him.

The Court: We will take our eleven o'clock recess. [194]

Mr. Gross: I can finish with this witness in about two more questions.

(Testimony of Eisuke Ikinaga.)

The Court: Are you going to have any more redirect?

Mr. Kashiwa: No, your Honor.

The Court: All right. Go ahead.

Q. (By Mr. Gross): Then Mr. Kaneichi Nii was an old friend of yours, was he not?

A. Yes, from that time on I associating with him very intimately as own brother.

Q. And you would have done anything that he asked you to do, would you not?

A. Anything that I can do, I'd be glad to do for him.

Q. And you would do anything you could to help his family, would you not?

A. From my first acquaintance with him I associated just like a brother, so I would be willing to do anything to help the family.

A. And you would still do anything to help Mr. Shoso Nii, would you not?

A. Time is a little different. Time has changed. And I am not at all—I mean the age is different. I was associated with his father so intimately, but the time has changed and Shoso Nii, due to the difference in age of Shoso Nii and [195] myself, I may not—I may ask you to repeat. It is rather confusing.

Q. Yes?

A. Since I was a very good friend of Nii, and as I have been constantly asked about Nii from Japan to help Shoso Nii, I'd be very happy if I



can help Shoso Nii, because I was an old friend of the family.

Mr. Gross: That's all.

The Court: No questions? Very well. The witness is excused. And have the next witness ready.

(Witness excused.)

(A short recess was taken at 11:05 a.m.)

### After Recess

The Court: Next witness.

Mr. Kashiwa: Your Honor, at this time I will offer the will which is marked as Plaintiff's for Identification No. 1 in evidence.

The Court: Let me see it. Regardless of the offer, I want to ask some questions about this. Where did you get this?

Mr. Kashiwa: Shoso Nii.

The Court: Where did he get it?

Mr. Kashiwa: I will put him on the stand. Get on the witness stand.

### SHOSO NII,

a witness in his own behalf, having [196] previously been sworn, was recalled and testified further as follows:

### Direct Examination

The Court: Mr. Nii, where did you get this document?

The Witness: It was in my safe in the store.

The Court: By what authority have you disclosed your father's will?

(Testimony of Shoso Nii.)

The Witness: Looking through my safe I found this document.

Q. (By Mr. Kashiwa): Was it sealed?

A. No, it was in an open envelope.

The Court: Did you have your father's permission to publish it now?

The Witness: No.

The Court: All right. You turned it over to Mr. Kashiwa?

The Witness: Yes.

Q. And this safe you speak of, it was in what safe? A. In my safe in the store.

Q. At the store which was turned over to you?

A. Yes.

The Court: Do you know whether or not since this date your father has revoked this will and made another?

The Witness: No, I don't.

The Court: All right. [197]

Q. Have you found another will or has your father sent you another will from Japan?

A. No.

Mr. Gross: I renew my objection previously stated.

The Court: Have you any questions of the witness on this exhibit or exhibit for identification?

#### Cross-Examination

By Mr. Gross:

Q. When did you take that will out of the safe, before or after you started this law suit?

A. Before this law suit.

(Testimony of Shoso Nii.)

Q. How long before this law suit?

A. Well, I don't know exactly when but after the store was turned over to me I looked into the safe and found this letter, this will in there.

Q. Was this 'way back in 1933?

A. Well, I don't know exactly what year.

Q. Now, Mr. Nii, you can recollect approximately when you took that out of the safe, can't you?

A. I don't know. I don't know what year but it was after the store was turned over to me in 1933.

Q. Was it in the year 1933?

A. That I can't say because I don't know the year.

Q. Was it in the year 1934?

A. I don't know. [198]

Q. Was it in the year 1935?

A. Well, I don't know.

Q. You want the Court to understand that you do not remember what year you took that document which you claim is the original last will and testament of your father out of the safe of the store in Waipahu, is that correct?

A. Yes.

Q. Was it five years ago?

A. Well, I don't remember the year so I can't say what year.

Q. Well, was it before you went to Japan?

A. Yes, before.

Q. Did you take that will to Japan with you?

A. No.

(Testimony of Shoso Nii.)

Q. You left it in the safe at Waipahu?

A. Yes.

Q. Did you say anything to your father about having taken it out of the safe when you were in Japan?      A. No.

Q. Did you discuss a will with your father when you were in Japan?      A. No.

Mr. Gross: I renew my objection to the offer of the will.

The Court: Well, we will get to that. Are there any [199] further questions to this witness?

Mr. Kashiwa: No, your Honor.

The Court: All right. You are excused.

(Witness excused.)

The Court: Now, you are offering this last will and testament of a man who not yet dead but which is marked Plaintiff's Exhibit 1 for Identification. You are offering it, I repeat, in evidence. On what grounds?

Mr. Kashiwa: As I stated before, your Honor, the evidence has shown that by agreement he turned over all the properties in Hawaii to Shoso Nii if he left Hawaii or if he died, and it would be all——

The Court: Who testified to that?

Mr. Kashiwa: Shoso did, your Honor.

The Court: I seem to recall that he did, but I want to be sure. All right.

Mr. Kashiwa: Now, there is that promise, your Honor. Of course, we are not at this time relying on the portion about the will, but we are rely-

ing on the portion about leaving Hawaii. He did leave Hawaii. He hasn't died. He is still living. He is 71. But that is one agreement, your Honor, and whether there is any memorandum to support that agreement under the statute of frauds—which I contemplate the Defense will bring up—any written memorandum will suffice. Now, under the Territorial decisions there are very flimsy documents that have been said to be enough to act as memoranda. They are set. If they are documents signed by the parties, it has been held that that is sufficient.

Now, I contend, and it has been held, and I will cite cases right now, that a will—I will cite two cases, your Honor: *Falk versus Fulton*, 262 Pacific 1025, 124 Kansas 745; and *Laune versus Chandless, et al*, 131 Atlantic 634, 99 New Jersey Equity 186. These cases all hold that a will is a sufficient memorandum.

The Court: I haven't any doubt about that, but in those particular cases what are the facts as to whether the man had died and the will had become effective? What are the facts in those cases?

Mr. Kashiwa: Those are cases of that nature, your Honor.

The Court: That the man had died and the will had been probated?

Mr. Kashiwa: In this case the promise is a double promise, your Honor, that is, there is an alternative; if he died it belongs to the son. But there is an agreement. It is one agreement, your Honor, it is one entire agreement. And any memorandum to



support that that agreement, your Honor, I contend is good evidence.

The Court: All right, but what is there here to show me that this memorandum is still effective? How do I know but what the man has cancelled this will by executing another will? [201]

Mr. Kashiwa: Your Honor, in these cases, for example, where there are cases of a subsequent will cancelling that former will, the courts have held that that will which is drawn in accordance with the evidence, with the agreement, may be introduced in evidence,——

The Court: Even though that is——

Mr. Kashiwa: ——and the property does not go in accordance with that will, and the administrator or executor is subject to this equitable promise which is supported by this memorandum.

The Court: Even though the will has been cancelled?

Mr. Kashiwa: Yes, your Honor.

The Court: Where are those cases?

Mr. Kashiwa: I will cite those cases now. In this *Vierra versus Shipman* case, your Honor, the Court did not discuss the competency of the will as evidence but in that very case there was another will which did not give the plaintiff the property as the old man promised. That is how the litigation arose. And the question whether that will was competent evidence was not discussed because the court said the case was taken out of the statute of frauds by the facts in the case. But, your Honor, there are many, many cases. I cannot cite you one

right now, but even in an ineffective will supposing a person makes a will to the person whom he promises to do something for, the will does not affect it, but it is signed by the person, and it is defective. So the property, [202] instead of going to that particular person, goes to somebody else. There are many, many cases to show that, that hold that a defectively signed will may be introduced as a memorandum. It is not as a will but as a memorandum to show that there was such a promise.

The Court: The thing that bothers me is, first of all, I don't see what right this plaintiff has to produce his father's will. It doesn't smell right. Secondly, whatever the man said in this document seems to me to be conditioned upon, as to its effectiveness, his dying. And until such time as he died, the things he said here were not to be bound or binding upon him. And it is obvious from the testimony here that so far as we all know the man is still alive in Japan. Further, there is no evidence that he hasn't in the meantime executed another will and cancelled this one. Perhaps the presumption is that until that is shown that it should be construed as being still in effect. I don't know. But in any event what he here says, he had no intention of this becoming effective until he died——

Mr. Gross: And an additional fact, if I may interrupt, that the will, this alleged memorandum, antedates the promise.

The Court: I hadn't paid attention to the dates.

Mr. Gross: The will is dated 1932.

The Court: When is the date the Plaintiff is supposed to have gotten out of school? [203]

Mr. Kashiwa: 1928.

The Court: What's that?

Mr. Kashiwa: 1928.

Mr. Gross: The pleadings which are filed here, the complaint states that when the Plaintiff's father went back to Japan in 1935—and the Plaintiff testified on the stand that his father called him and the family before he went to Japan and said, had this supposed conversation with him.

The Court: He also testified they had this type of conversation many times.

Mr. Gross: But he didn't identify either the time or the place. And I made a motion to strike the entire testimony, which I think the Court still has reserved a ruling on, on the grounds that it was vague, indefinite and uncertain and did not place either the time or the place or the date of the conversation or who was present. As a matter of fact, this will——

The Court: Wait a minute. I am not hearing you in full. I have just allowed you to interrupt to interject a thought here. How about that, Mr. Kashiwa? The contention is going to be made, so I might as well ask you now, what is your reaction to the proposition that this memorandum that you rely on as exempting the transaction from the statute of frauds is said to pre-date the alleged promise?

Mr. Kashiwa: Well, your Honor, the testimony was that [204] that is the reason why he quit school in 1928. This promise was made to him that he was going to——

The Court: All right.

Mr. Kashiwa: Then, your Honor, may I have a ruling on this?

The Court: Well, I want to hear your theory before I turn to the other side and hear their objections. What are your objections now?

Mr. Gross: And the additional fact, if the Court please, that the will actually antedates the title to this real estate which is the subject matter of this law suit.

The Court: What do you mean by that?

Mr. Gross: I mean that the will was made out at a date prior to the time that Kaneichi Nii acquired title to this real estate here. So if this will is being submitted for the purpose of showing that Kaneichi Nii intended to give this particular real estate to his son, it is completely a nullity because at the time he made the will he didn't own the real estate. I think that the whole line of offer is incompetent and immaterial, besides the other things which the Court has pointed out, the surrounding circumstances how a son happens to be in possession of what purports to be an original testamentary document of his father; the fact that we don't know whether the will has been subsequently cancelled by a new will; the fact that the father is still alive; and the fact [205] that all of the cases which the Court has pointed out to Mr. Kashiwa in which this effort is made are cases in which you have two wills, the man has died and the first will is being offered in evidence for the purpose of showing that the will which was admitted to probate

was not the intention of the testator because he had previously expressed another intention, and the will is offered in evidence for the purpose of showing this intention.

Here you have a document which is dated prior to the time that this man acquired title to the real estate, so obviously he could not have intended this will to be effective as to the real estate which is the subject matter of this law suit because he didn't own the real estate then.

The Court: Well, the promise that has been testified to as having been made to the Plaintiff and repeated several times was first made, according to the evidence, about the time the Plaintiff got out of grammar school. And in exchange for his not continuing school the father, according to the testimony, told him that if he stayed with him and worked in the store, and so forth, and so on, that when the father went back to Japan to stay or when he died, that everything the father had in Hawaii would then become the property of the Plaintiff. Might that not be construed as a continuing promise and include after-acquired property?

Mr. Gross: If the Court please, I believe that we have [206] all, both Mr. Kashiwa and myself, permitted this case to get far away from the issues here. I apologize at this time to the Court. I tried to keep it confined to the issues. We are going into a lot of matters that have nothing to do with this law suit. We vest a piece of real estate in 1947. This real estate was acquired in 1932, prior to the



time that this will was made out, by Kaneichi Nii. Title to this real estate was always in Kaneichi Nii. Now, in an effort to get around what Mr. Kashiwa knows the documentary facts show, he has spun this theory of a promise and has tried this suit as though he were trying to obtain specific performance of a contract against the man's own father. He claims a gift. He claims a verbal gift. He hasn't proven it, because a man with relation to his son probably says many things in the course of a lifetime: son, if you behave yourself you are going to have all of my property. I think all of us feel that way about sons, and particularly in the Japanese family where a first son is particularly important. But the facts which are of record—when these parties were not confronted with this particular law suit, show exactly not what Kaneichi Nii intended to do but what he did do. I don't care how many witnesses you bring in here to say that they had a conversation with Kaneichi Nii, the fact remains that he, a person *Sui juris* and not shown to be incompetent in any way, did certain acts. Those acts can not be disputed because they are matters of record. He made, [207] executed and delivered certain papers which are matters of record.

Now, in an effort to get around a record which is overwhelming against him, Mr. Kashiwa has read a lot of cases in the law of trusts and is trying this law suit either on the theory of specific performance by the son against his father or on the theory of a constructive trust. But he is not trying

it as a Section 9 law suit against the Alien Property Custodian on the theory that title to this real estate was not in the vestee at the time it was vested, and therefore that the Plaintiff had a right to a return of the property. That is the issue before the Court. And all this extraneous material that we have been both very derelict in letting into the record in my opinion is completely irrelevant to the issues.

Mr. Kashiwa: If your Honor please, Counsel seems to think that the title to a piece of real property or patent or anything in a certain person's name, and if he is a resident of Japan or Germany, they take it and that's all there is to it; nobody has any remedy to it. The cases hold, your Honor, that anybody who has an equitable title, or if the A.P.C. by mistake takes it, he has under Section 9 a remedy. And, your Honor, I can cite you a case right now, right here, in which a German, a purportedly German patent was taken because the patentee was a resident of Germany. I will cite that case right now. This is a very late case. It is a very interesting [208] case, Rudenberg versus Clark, the same Defendant as in this case, 72 Federal Supplement 381, where the beneficial owner of a patent recovered the patent right under Section 9(a) suit. Now, I read this case quite a while ago but the legal patent was in an enemy alien's name. But this person—I think he is some professor in some school—he came across, he was not a hostile enemy to this country, and he is a Jewish professor, I think. He positively established that that

was his patent, and he got it back through Federal District Court, and the court in an overwhelming decision, through the circumstances in that case, decided for this professor in that school. That is to say, your Honor, just because a person has the legal title, at the time the enemy has a legal title, the A.P.C. can't take it and say nobody can touch it. The Alien Property Custodian has been held time and time again that it has no more than that person has. If he had nothing, the A.P.C. takes nothing. It is subject to all equity. The power of the Alien Property Custodian does not extend to take powers to take property of citizens of the United States.

Mr. Gross: I beg to differ with you there, Mr. Kashiwa. Where citizens of the United States are cloaking for citizens of Japan or Germany, they have taken it and have been upheld.

Mr. Kashiwa: Where the beneficial owner is a United States citizen, that person can file a 9(a) suit and get it back. [209]

The Court: By way of specific performance?

Mr. Kashiwa: If he has any equitable right, any right which may be recognized in a court of equity or even law, he may have that property returned to him. And in this patent case, that is an equitable right, your Honor.

The Court: Well, as I understand this case, this is a suit by this Plaintiff claiming that the property which was seized belonged to him and not to his father because at some prior time the father had given the property to this Plaintiff. Now, it is in-

cumbent on the Plaintiff to prove that which he asserts, namely, that this is his property, having been given to him by way of gift. The most that I have heard here is that the father promised the son to give him at some time in the future, upon the happening of one or two events, all of his property in Hawaii. The facts, as I see them at the moment, indicate that he gave to the son prior to leaving for Japan his store and the accounts relating thereto. But as to the property which is the subject matter of this law suit, as it looks to me at the moment, what we have here is a situation wherein, though the father may have promised to give the son this property when he left Hawaii or if he died, he didn't actually give it to the son, and the son is here proclaiming this promise of which you claim this will is a memorandum of part of the promise. And you are in effect seeking to enforce the promise against the father in whose shoes the [210] A.P.C. now stand. In other words, you are here on the basis of your evidence as distinguished from your pleadings seeking specific performance against the person who now stands in the father's shoes. And it is, in sum and substance, in effect a suit by the son against his father with the son producing the father's will against the father without authority.

Mr. Kashiwa: Your Honor, that is as far as the will is concerned.

The Court: Well, that is what is before me. That is what I am trying to rule on.

Mr. Kashiwa: The two contingencies, the con-

tingencies about that have not happened, but the contingency about leaving Hawaii has happened.

The Court: Yes.

Mr. Kashiwa: All right. Shoso Nii testified that the father gave him that property.

The Court: But the record shows he didn't.

Mr. Kashiwa: All right, your Honor. There is such a thing as gift of real property, your Honor, without signing over an actual deed. There are many, many gifts of real property sustained in the law books. I can cite to your Honor later showing that a gift of real property, if certain conditions exist, there need not be a deed.

The Court: Gift as distinguished from a binding promise which you can enforce on a specific performance basis. [211]

Mr. Kashiwa: Your Honor, it is my contention that when that father left he gave everything to the son, as he has testified, just before he left he gave everything to him. He actually did give, because the legal title was not changed, but the legal title—the contents have all been given to him. Now, for example, all the benefits, the rental and everything, he has collected.

The Court: That doesn't prove anything.

Mr. Kashiwa: But with surrounding circumstances, I can cite case after case that gifts of real property without these have been sustained. Now, those are in the case books, your Honor.

The Court: I will want to see them. But the only thing that is before me now is whether I shall admit this deed or this will as being relevant to the



issues. Don't talk while I am talking, please. All right. Now, what have you got to say?

Mr. Kashiwa: Another theory under which I wish to present this will is the fact that there was such a promise made, a promise that if he returns from Hawaii he will give it all, or if he dies he will give it. Now, as evidence of that promise—this is signed by the person whose interest Mr. Gross here, the Alien Property Custodian, here claims. Now, it is my contention that this is in addition to that evidence of that promise. It has certain evidentiary value. It is not [212] conclusive, your Honor, but it is a circumstantial matter which may be considered.

The Court: I still think it smells. It is a harsh word to use but I am using it advisedly, for it in turn again is an attempt by the son to prove and hold his father to a promise by producing against his father in effect his father's own will without permission.

Mr. Kashiwa: Your Honor, this will was left in the son's safe.

The Court: There are lots of things I may have in my possession that I haven't any right to use, or you as an attorney. Talking about confidential relations, I should certainly think that the son before producing this against his father would have to have authority from the father to produce it. I don't like the smell of the thing.

Mr. Kashiwa: I have not established this will.

The Court: No, but you are trying to use the father's will as proof to bind the father to a prom-

ise that the father allegedly made, a promises according to the testimony. It hasn't been a wholesome smell here at all, I don't mind telling you. I can't see how I can admit that now. I will certainly want to read these cases that you have been talking about before I do. I am not going to rule on that now. At the end of the case, if you want me to read some of these authorities that you intend to present, that you intend to [213] make this document admissible, I will gladly read them, but at the moment I am not prepared to rule one way or another. And if I had to rule I will rule against you. I will leave it open until the end of the case. If you want to give me some further authorities——

Mr. Kashiwa: Your Honor, at this time I have made an exact copy of the will with the Japanese signatures, copies made by the interpreter who was here yesterday.

Mr. Gross: Well, I think that until such time as the Court finally rules on this matter, we can compare the copies at that time.

The Court: You want the original will left here until I dispose of it? It is as safe in my custody as, I believe, the son's.

Mr. Kashiwa: May this copy be attached to it?

The Court: Yes, the copy may be attached to it. And eventually if I admit it I will probably allow you to make a substitution.

Mr. Kashiwa: Yes, your Honor.

The Court: All right. Anything else?

Mr. Kashiwa: I want to put Mr. Nii back for just two or three questions.

The Court: All right.

## SHOSO NII,

a witness in his own behalf, having previously been sworn, was recalled and testified further [214] as follows:

## Direct Examination

By Mr. Kashiwa:

Q. Your name? A. Shoso Nii.

Q. Now, did your father at any time buy from Mr. Ikinaga's garage, Waipahu Garage, a Chrysler car for you? A. Yes.

Mr. Gross: If the Court please, I believe this is a matter which was asked the witness before, and I object on the grounds that it was so far away from the issues that the Court stated, that the Court felt it made no difference whether his father bought an automobile in 1928 from the Waipahu Garage.

The Court: Well, certainly it is an afterthought. As to the car, I remember at the moment, without checking my notes, only the specific testimony of the garage man that at some time the father bought a Chrysler automobile, and he did not know in whose name the father took title to the car. As to whether this Plaintiff ever testified about the car or not, I have no recollection. The car I remember his talking about is a Ford truck which he drove.

Mr. Gross: I believe that the Court's recollection is accurate, that that was the testimony of the garage owner. But I am objecting to this witness answering the question on the grounds that it is irrelevant to the issues. I object to the [215] question on the grounds that it is irrelevant.

(Testimony of Shoso Nii.)

The Court: Well, it may be, but I have heard about the car before. Go ahead.

Mr. Kashiwa: Answer the question.

A. He bought me a Chrysler.

Q. What kind of Chrysler? A. A sedan.

Q. When was that?

A. That was in 1931.

Q. Why did he buy you that car?

Mr. Gross: I object to that on the grounds that he is calling for this witness to state the frame of mind of his father in 1935, in 1931. I don't believe this witness is competent to testify as to the frame of mind of his father in 1931.

Mr. Kashiwa: I will withdraw that question.

Q. Did your father tell you why he bought that car for you? A. Yes.

Mr. Gross: If the Court please, it looks like Kashiwa is going to try to get it in the back door again—the same thing. If he wants to place the time and the place and the date of the conversation and who was present——

The Court: The objection to that question is good. The objection is good to that question. [216]

Mr. Kashiwa: On what grounds, your Honor?

The Court: Identify it.

Q. When and where did this conversation take place? A. At our home in 1931.

Q. Was anybody there?

A. Yes, my mother was there.

Q. Your mother? A. Yes.

Q. What was that conversation?

(Testimony of Shoso Nii.)

Mr. Gross: I object at this time on the grounds that this is hearsay.

The Court: How about that?

Mr. Kashiwa: Your Honor, I offer to prove that during the period of time——

The Court: I am not interested in what you are offering. How about the objection to the question which is hearsay? You are asking him to tell us what his father said to him. Isn't that hearsay?

Mr. Kashiwa: The person making the statement is a former owner of the property.

The Court: We are talking about an automobile now.

Mr. Kashiwa: Yes, your Honor, but it all ties up to this promise that he will give all of his property to Shoso when he dies or when he leaves the Territory. I will offer to prove, your Honor, that at many times he, Shoso Nii, wanted to quit and this was one of the inducements to still keep him there.

The Court: All right. We might as well have the whole picture. I think the objection is good but I am going to allow the question.

Q. What was the conversation?

A. Since I left school I wanted to go to school but my father wanted me to work in the store, and we had lots of arguments quite often. And he promised me to, promised me that he would buy a car for me if I stayed in the store, worked in the store. And in 1931 he bought me a Chrysler.

Mr. Gross: I move to strike that testimony on



(Testimony of Shoso Nii.)

the grounds that it does not tend to prove even what Mr. Kashiwa said it would tend to prove. It proves that the father, in order to induce the son to stay in the store, bought the automobile, according to the conversation. I make a motion to strike the testimony.

The Court: Overruled.

Q. Was there any more than that conversation?

A. Well, the car was only part of his——

Q. Just a minute. Whose name was the car put in?      A. In my name.

Mr. Gross: I move to strike that on the grounds, if the Court please, that that is not the best evidence, in whose name the title of the automobile was. I think the Court ruled on that before when the President of the Waipahu Garage, [218] Limited, testified, that the best evidence of the title to the automobile would be the certificate which was issued at that time.

The Court: I have so ruled. The objection again is that it is not the best evidence.

Q. Who used that car?

A. I used the car.

Q. Was your father able to drive that car?

A. No.

Q. Now, going back to that conversation, was there any additional conversation?

A. Well, he promised to give me everything that he had but since I wanted to get out from the store he bought me a car.

Q. Now, there was testimony here that your sis-

(Testimony of Shoso Nii.)

ter Hatsuko—no, your sister Florence, resided in the Territory.      A. Yes.

Q. After your father left, who looked after her?      A. I did.

Mr. Gross: If the Court please, this has all been gone into before by Kashiwa. I think that the witness testified that his sister lived with him in the house there and he took care of her when his father went back to Japan.

Mr. Kashiwa: I don't remember it.

The Court: I don't remember that either. It is late, though. Why are you going into all this now? [219]

Mr. Kashiwa: Your Honor, I am asking to reopen this case for this purpose.

The Court: That's a fine time to ask for it. You are in the middle—all right, go ahead, let's hear the whole story. Get it all in now because this is the last time.

Q. Whom did she stay with?

A. She stayed with us.

Q. Now, prior to your father's departure in 1935, in May, 1935, was there any conversation with relation to that?      A. I didn't get the question.

Q. Prior to the time your father left for Japan in 1935, just prior to it, did you and your father have any conversation with relation to Hatsuko's care—I mean Florence's care?

A. Yes, we had.

Mr. Gross: If the Court please, this is hearsay again. I want to repeat, I can't possibly see how

(Testimony of Shoso Nii.)

the conversation with reference to Hatsuko's care has to do with the gift of the real estate which is the theory of the Plaintiff's law suit.

The Court: I'm not sure I can either. Go on.

Q. What was that conversation?

A. Since my father was leaving my sister with me, he told me to look after my sister Florence, and I supported her right through until I went to Japan in 1941. [220]

Q. Was there anything said about giving the property to you at that time?      A. Yes.

Q. What was that?

A. Well, it was the same thing, that he would give me all the property——

Mr. Gross: If the Court please, so that the record will be clear, I am objecting to all of this conversation, that it is hearsay and not the best evidence.

The Court: Yes, your objection will be revealed as running to this whole line. Now, the answer is what? What is your answer?

A. He promised me, he gave me all the property in the Territory.

Q. He promised you or he gave?

A. He gave me.

The Court: Let me have that answer again. There have been too many interruptions. What is the answer?

The Witness: He gave me all the property in the Territory.

The Court: Go ahead.

(Testimony of Shoso Nii.)

Q. Now, was this conversation at the dinner table the last night before your father left in which you mentioned that your wife was present, too?

A. Yes.

Mr. Kashiwa: That's all. [221]

The Court: Cross-examination?

Cross-Examination

By Mr. Gross:

Q. Mr. Shoso Nii, as of what date do you claim that your father gave you the real estate which is the subject matter of this law suit?

A. I can't remember exactly the date, but it was in 1935, just the date before he left for Japan. We had supper, the family had supper together, and at the supper table he say that he would give me all the properties in the Territory.

Q. Then I understand it is your contention that the gift was made in 1935 just before your father left for Japan?

A. Well, there wasn't any written gift but—papers—but he had told me many, many times before that that he would give me the properties.

Q. You testified on cross-examination before that your father supported you and your wife and four children in Japan for five years. Did you ever pay him that money back? A. No.

Mr. Gross: That's all.

Mr. Kashiwa: You worked for your father, did you?

The Witness: I worked for my father.

Mr. Kashiwa: That's all.

The Court: All right. You are excused.

(Witness excused.) [222]

Mr. Kashiwa: That is our case, your Honor.

Mr. Gross: If the Court please, I've got two men who are employed by governmental offices here, and I believe I can dispose of them very quickly. And if it looks like it is going to be very long—I think we can dispose of our case——

The Court: All right.

Mr. Gross: Mr. Makinney, would you take the witness stand, please.

### KENNETH MAKINNEY

a witness on behalf of the Defendant, being duly sworn, testified as follows:

#### Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: My name is Kenneth Makinney. My age is 40 years. I am a licensed abstractor of land titles.

The Court: And you reside here in Honolulu?

The Witness: In Honolulu.

The Court: You are a citizen of the United States?

The Witness: Yes.

The Court: Exclusively?

The Witness: Yes, sir.

The Court: Take the witness.

Mr. Gross: If the Court please, Mr. Kashiwa informs me that he is willing to stipulate that this



(Testimony of Kenneth Makinney.)

document which I was going to hand the witness and ask him to examine, that he [223] prepared as an abstractor of titles, which the witness prepared with reference to this piece of real estate.

Mr. Kashiwa: It is not an abstract of title.

Mr. Gross: It is a certificate of title of real estate. And if he is willing to admit this into evidence as such, then I will have no further questions from this witness.

Mr. Kashiwa: I will also stipulate that this covers all of the property in dispute, including that little right of way.

Mr. Gross: Yes. It is dated 1944.

The Court: Very well. It may become, then, the Government's exhibit——

The Clerk: Government's Exhibit No. 1.

(The document referred to was received in evidence as "U. S. Exhibit No. 1.")

[Printer's Note: U. S. Exhibit No. 1 is set out in full at page 462 of this printed Record.]

The Court: You are excused.

(Witness excused.)

The Court: Unless you have some questions.

Mr. Kashiwa: Just a minute.

The Court: Mr. Makinney, just a minute.

(Witness recalled.)

(Testimony of Kenneth Makinney.)

By Mr. Kashiwa:

Q. Mr. Makinney, this certificate is only as to what you know from the search of the title in the Bureau of Conveyances?

A. And also the other offices as mentioned in the first paragraph of the certificate.

Q. Those are——

A. Supreme Court and Circuit Court of the First Judicial Circuit, Tax Assessing Registrar of Conveyances.

Q. This certification is only on reliance of those records?           A. That's correct.

Q. And any other claims, if there are any, you don't certify to?

A. Not unless they are shown here, and there are no other claims as shown by the indexes in these various offices.

Q. In other words, if there are any other claims not recorded, you wouldn't know about them?

A. That's correct.

Q. And you would not certify?

A. They wouldn't be revealed by the record in these offices.

By Mr. Gross:

Q. Mr. Makinney, how long have you been a licensed abstractor?

A. Since the passage of the statute in 1929 or a year after that in 1930 I took my examination.

Q. Will you examine the Government's Exhibit 1 in evidence and state whether that is the type of certificate which is issued, which is usually relied

upon in real estate transactions [225] in the Territory of Hawaii?      A. It is.

Mr. Gross: That's all.

The Court: You are excused.

(Witness excused.)

The Court: Next witness.

THEODORE W. T. KAM,

a witness on behalf of the Defendant, being duly sworn, testified as follows:

Direct Examination

The Court: What is your name, age, residence, occupation and citizenship?

The Witness: Theodore W. T. Kam.

The Court: And your age?

The Witness: Thirty-four.

The Court: You live here in Honolulu?

The Witness: That's right.

The Court: What is your occupation?

The Witness: Accountant-Administrator for the Territorial Tax Office.

The Court: And are you a citizen of the United States?

The Witness: Yes, I am.

The Court: Exclusively?

The Witness: That's right.

The Court: Take the witness. [226]

Mr. Gross: I gather that in the interests of saving time Mr. Kashiwa is willing to stipulate that the

(Testimony of Theodore W. T. Kam.)

documents which I hold in my hands, which have not been completely identified yet, but which consist of duplicate copies of tax bills for the years 1935 through 1947——

Mr. Kashiwa: Real property tax.

Mr. Gross: ——real property tax bills payable to the Territory of Hawaii, are true and correct copies, duplicates of the originals.

Mr. Kashiwa: And also the fact that the stamp mark of payment is shown on the side.

Mr. Gross: And that they may be admitted into evidence as exhibits.

Mr. Kashiwa: Yes. Of course, it is understood it covers this property in dispute.

The Court: That is what I understand.

Mr. Gross: That is what they are being offered for.

The Court: All right. They may become exhibit——

The Clerk: U. S. Exhibit No. 2.

The Court: “A” to what? Has anyone any further questions of this witness? You are excused.

(Witness excused.)

The Clerk: “2-A” to “2-M.”

(The documents referred to were received in evidence as “U. S. Exhibits 2-A to 2-M.”) [227]

[Printer’s Note: U. S. Exhibits 2-A to 2-M are set out in full at pages 468 to 472 of this printed Record.]

The Court: Do all of those tax bills reveal that

bills were made—well, they speak for themselves. Let me look at them. They are all billed to Kaneichi Nii, the father.

Mr. Gross: That is correct.

The Court: All right.

Mr. Kashiwa: They are marked “paid,” your Honor.

The Court: All right. Any further evidence?

Mr. Gross: The only further evidence that the Government has at this time to offer is the admissions of fact which I’d like to read into the record. I think we can probably read this into the record as a matter of a few minutes. And that is our case.

The Court: Well, assuming that we can do that in a few minutes, are you going to be prepared to argue your respective cases this afternoon?

Mr. Kashiwa: I am ready, your Honor.

The Court: In which event, then, why not adjourn for the noon recess and finish up the loose ends, if any, that may be hanging around this afternoon?

Mr. Gross: As a matter of argument I am very frank to state that when the Court was discussing this will it stated the issues in this case so well that I just don’t feel there is anything that I can add. If you want me to try to highlight the evidence in the case, I will be glad to.

Mr. Kashiwa: Of course, your Honor, I am not prepared [228] to submit a written memorandum. I will follow that up with my argument.

The Court: All right. Discuss it in your argument. I will give you until two o’clock to orient



yourselves and be prepared. It will probably take five or ten minutes when we reconvene to get the additional stipulated facts into evidence, facts that are already in the record.

Mr. Gross: Yes.

The Court: All right, then, until two o'clock the Court will stand at recess.

(The Court recessed at 12:12 p.m.) [229]

### Afternoon Session

Mr. Kashiwa: Your Honor, may I report to the Court at the present time that those photostats will be ready tomorrow morning. They are being done now.

The Court: Call the case.

The Clerk: Civil No. 837, Shoso Nii versus Tom C. Clark.

Mr. Gross: If the Court please, I have a witness here that won't take very long. Although he speaks English, he says he prefers to talk through an interpreter, and if Mr. Kashiwa has no objection we'd like to ask Mr. Adachi.

The Court: Well, I have objection, regardless of that. Didn't this man testify in English yesterday?

The Clerk: Yes, he did.

The Court: He testifies in English today. And he has previously been sworn. You are Mr. Mikami? You are the same Katsutoshi Mikami who heretofore has testified in this case, and you are under oath.

## KATSUTOSHI MIKAMI,

a witness on behalf of the Plaintiff, was recalled and testified further as follows:

The Court: I remind you that you are still under oath. You remember taking the oath?

The Witness: I no understand English very well, so I want an interpreter.

The Court: I know what you want, and what you are going to be allowed to do are two different things. You testified [230] yesterday in the best English that you could. I could understand you and you could understand that which was going on, and I see no reason why you shouldn't continue. But you remember taking an oath the other day, yesterday, I believe, to tell the truth? You remember that? You remember raising your right hand and swearing to tell the truth?

The Witness: Yes.

The Court: You are still under that same oath to tell the truth.

Mr. Gross: If the Court please, I would like some indulgence if possible. We may be able to get these by agreement.

The Court: May I interrupt to clear up something? The Clerk calls my attention to something. At the time this morning that the witness had the corporate books here of that Waipahu Garage and a stipulation was entered into, you undertook, as you mentioned, Mr. Kashiwa, to supply later photostats of the pages which were mentioned in the stipulation. The Clerk invites my attention to the fact that those photostats have not been offered in evi-

(Testimony of Katsutoshi Mikami.)

dence. So I will let the record show that when they are produced they will become part of that stipulation and may be given a marking by the Clerk.

Mr. Kashiwa: There will be two sets introduced. One is the dividends and one showing the endorsements on the stock.

The Court: All right. [231]

The Clerk: Do you want me to give them a number now, your Honor?

The Court: Yes, you can.

The Clerk: The endorsement on the stock will be Plaintiff's Exhibit "N" and the dividend payments will be Plaintiff's Exhibit "O."

(The documents referred to were received in evidence as Plaintiff's Exhibits "N" and "O.")

[Printer's Note: Plaintiff's Exhibits N and O are set out in full at pages 448 to 460 of this printed Record.]

Mr. Gross: If the Court please, Mr. Kashiwa has agreed that all of these documents may go in by stipulation, so if you would like to examine them, the Clerk can assign numbers to them.

The Court: All right. The documents may be received and marked by the Clerk as Government's exhibits. Are they in order there?

Mr. Gross: I think if we put them in chronological order, it will be best. I will do that for you.

The Court: What is the general label that you put on them?

Mr. Gross: These will all be letters addressed to the Alien Property.

(Testimony of Katsutoshi Mikami.)

The Court: By whom?

Mr. Gross: Three letters by Mr. Mikami and two letters by Mr. Kashiwa.

The Clerk: They will be U. S. Exhibits 3-A, 3-B, 3-C, [232] 3-D and 3-E; 3-A will be letter of October 27, 1947; 3-B is a letter dated December 3, 1947; 3-C is a letter dated February 11, '47; and 3-D is a letter dated March 25, 1948; and 3-E is a letter dated March 31, 1948.

Mr. Gross: 3-E has attachments to it, five sheets of attachments.

The Court: In lieu of the letters being by agreement received in evidence, you have no questions for this witness?

Mr. Gross: I was just going to have him——

The Court: Do you have any questions for the witness?

Mr. Kashiwa: Yes, I have. Oh, I guess not. That's all.

The Court: They aren't going to ask you any questions, so you are excused.

(Witness excused.)

(The documents referred to above were received in evidence as U. S. Exhibits 3-A, 3-B, 3-C, 3-D and 3-E.)

[Printer's Note: U. E. Exhibits 3-A, 3-B, 3-C, 3D and 3-E are set out in full at pages 473 to 485 of this printed Record.]

The Court: Anything further?

Mr. Gross: The only thing further, if the Court please, are those agreed admissions of fact which I would like to read into the record. They are right in the Court file.

The Court: They are to be found in the record in what document?

Mr. Gross: A request for the admission of facts, for the genuineness of documents filed—let me change that. It is a request for the admission of genuineness of documents [233] and requests for admission of facts pursuant to Rule 36 of the Rules of Civil Procedure filed September 9, 1948. The documents which were admitted have already been introduced in evidence by the Plaintiff. May we get the Court's indulgence again here? There is just a matter of my description here. We want to straighten this out before we read it. According to the admissions filed by the attorney for the plaintiff on September 13, 1948, in response to the request, the following facts are admitted. I am reading from page 4 of the original request.

"1. The facts that Kaneichi Nii, plaintiff's father, and a citizen of Japan, resided in Honolulu, Territory of Hawaii, for many years. In 1935, Kaneichi Nii returned to Japan and has resided in Japan until the present date. During his residence in Honolulu, Kaneichi Nii acquired certain property located at Waipahu, Oahu, Territory of Hawaii."

The property which is the subject matter of this law suit is described in the Vesting Order and in the



documents which have heretofore been admitted in evidence.

Mr. Kashiwa: That is all right.

Mr. Gross: "2. The facts that under date of January 2, 1933, Kaneichi Nii executed a Bill of Sale in favor of his son, Shoso Nii, the plaintiff herein, for, 'That certain store in Waipahu, aforesaid, known as "K. Nii Shoten" together with all of the automobiles, furniture, fixtures, goods, wares and [234] merchandise, books and accounts receivable, now being in and used in that certain store, aforesaid.' Said Bill of Sale was recorded in Liber 1205, Page 26, of record, on May 26, 1933, in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii."

"The facts that under date of December 27, 1932, Kaneichi Nii purchased from T. Ota and Yasu Ota, his wife, a parcel of real estate located in Waipahu, Oahu, described in paragraph 1-2 above, (which property is the subject matter of this lawsuit) and the property was conveyed by deed dated December 27, 1932, from T. Ota and Yasu Ota, his wife, to Kaneichi Nii. The deed was recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, in Liber 1189, Page 91, on December 27, 1932."

"4. The facts that under date of July 23, 1938, T. Ota and Yasu Ota, his wife, conveyed by deed dated July 23, 1938, to Kaneichi Nii, plaintiff's father, a parcel of real estate located in Waipahu, Oahu, and said deed specifically describes certain real estate which is the subject matter of this law-

suit and said deed was recorded on July 23, 1938, in Liber 1451, Page 418, of the records of the Office of the Registrar of Conveyances for the City and County of Honolulu.”

“5. The facts that by Vesting Order dated September 12, 1947, being Number 9777, the Attorney General of the United States as Successor to the Alien Property Custodian under the [235] authority of the Trading with the Enemy Act, as Amended, vested the parcels of real estate referred to in paragraphs II-3 and II-4 above as property of Kaneichi Nii, a resident and a national of Japan. At the time that the Vesting Order was filed in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, record title to the said real estate was in Kaneichi Nii.”

“6. The facts that Shoso Nii, the plaintiff herein, and son of Kaneichi Nii, was born in Waipahu, Oahu, on January 3, 1914, and left the Hawaiian Islands for Japan in July, 1941. Shoso Nii lived in Japan during all the intervening period from July, 1941, and returned to the Territory of Hawaii on November 8, 1947. On January 5, 1948, the plaintiff filed the instant suit under Section 9(a) of the Trading with the Enemy Act, as Amended, and alleged among other things:

‘That the plaintiff’s father is Kaneichi Nii; that said Kaneichi Nii is a citizen of Japan and has been continuously residing in Japan since May, 1935, to the date hereof; that prior to on or about May, 1935, said Kaneichi Nii resided for a long period of time at Waipahu aforesaid and operated a general mer-

chandise store known as the "K. Nii Store" at Waipahu, aforesaid; that due to his business ability, hard work and thrifty habits said Kaneichi Nii acquired considerable real property holdings in Waipahu aforesaid and accumulated a sizeable estate for himself; that in May, 1935, said Kaneichi Nii [236] decided to retire from active business and returned to Japan; that at the time he returned to Japan he left and gave by way of gift everything he left in the Territory of Hawaii to his only son, the plaintiff herein; and that the general merchandise store was turned over to the plaintiff by a duly executed bill of sale."

That was a quotation from the pleadings, if the Court please.

"7. The facts that in paragraph VII of the complaint filed in this lawsuit it is alleged:

'That with relation to the real property aforedescribed in paragraph VI although it was orally given to the plaintiff, there was never a deed executed in favor of the plaintiff from his father.' "

"8. The facts that as of February 7, 1939, Kaneichi Nii and Saku Nii, his wife, father and mother respectively of Shoso Nii, the plaintiff herein, executed before William C. Affelt, Jr., Vice Consul of the United States at Kobe, Japan, their respective powers of attorney running to Shoso Nii, the plaintiff, which powers of attorney are recorded in the Office of the Registrar of Conveyances for the City and County of Honolulu, Territory of Hawaii, in Liber 1503, Pages 190 to 197, inclusive."

"9. The facts that in the examination of the

plaintiff, conducted on July 22, 1948, pursuant to Rule 26 of the Rules [237] of Civil Procedure for the District Courts of the United States, the plaintiff Shoso Nii testified under oath as follows:

‘Q. When you were over in Japan with your father from 1941 to 1947, did you at any time tell him that you had found out the title of this real estate was not in yourself?           A. No, sir.

‘Q. You did not?           A. No.

‘Q. And why didn’t you?

‘A. Because I didn’t find any necessity in the name being changed.’ ”

Mr. Kashiwa: Your Honor, except for one correction.

Mr. Gross: There is this addenda to this, that the property acquired in 1938 from Ota and his wife was not acquired while Kaneichi Nii was a resident of Honolulu. He was in Japan at the time that the property was acquired. But the deed was made out to him.

If the Court please, that is the Government’s case.

The Court: Do you have a counter-claim in this matter?

Mr. Gross: Yes, if the Court please.

The Court: No evidence being offered as to that?

Mr. Gross: Yes, this exhibit here.

The Court: Exhibit 3-A to D relates to the counter-claim?

Mr. Gross: Yes, your Honor. [238]

The Court: All right. The only thing that I can think of, unless you have some rebuttal that you want to offer——

Mr. Kashiwa: No, your Honor.

The Court: The only thing that I can think of that is hanging fire is that will. And before hearing your argument upon the whole case, have you any of those will cases you want to call my attention to before I rule on that offer? Now just limit yourself to that offer. I don't want to hear your argument on the whole case now. That is Exhibit 1 for identification.

The Clerk: Plaintiff's 1 for identification.

Mr. Kashiwa: Your Honor, all I have to cite is 49 American Jurisprudence, page 642, paragraph 333 with relation to it.

The Court: Paragraph what?

Mr. Kashiwa: 330.

The Court: 330?

Mr. Kashiwa: It has a notation of the entire matter of the statute of frauds. And the question is, under the title, what is a memorandum?

The Court: Oh, I am satisfied that a will would form or fall into the category of a memorandum. I am not bothered about that. What bothers me is some of the things I mentioned this morning: One, was it ever intended by the man who wrote it to be effective for any purpose until he died? Nobody is [239] supposed to see this thing until he died.

Mr. Kashiwa: Your Honor, I know a lot of people that don't mind having their will seen, and especially in this case, the only son. Give it to the only son. It is right in the open safe. He can look at it. No objection.

The Court: That's what you say.

Mr. Kashiwa: As far as your Honor is ethically



concerned, if there is any way to communicate with Mr. Kaneichi Nii, if he wired him today he will say it is perfectly all right.

The Court: I don't doubt it.

Mr. Kashiwa: So that is the position I take. He brought it into my office. He showed it to me. And if this will, your Honor, is in somebody else's possession, I can subpoena that and have it brought into this Court and introduce it in evidence. I am sure about that.

The Court: Well, it is here. We don't have to worry about that other party. I have my doubts on that. Well, what is this American Jurisprudence reference that you have cited, what does it have to say?

Mr. Kashiwa: The entire matter on the subject of wills as being a memorandum is discussed in that whole paragraph.

The Court: Let me have it.

Mr. Kashiwa: I brought so many books, your Honor, from my library——

The Court: 49 American Jurisprudence. (To the Bailiff.) [240] Will you go through here and get it.

Mr. Kashiwa: The subject matter discussed therein, there are divided lines of authority. The Kansas case which I cited to your Honor holds that if there is an agreement to devise that these wills may be brought in as memoranda, although the contents of that will do not relate to, do not recite any prior agreement. Now, some of the cases hold that there must be a referral to that agreement. Now there is a dividing line of cases. And it is my contention that here in the Territory of Hawaii, if your Honor

has gone through those cases which hold the memorandum to be sufficient, very little is necessary to hold a memorandum sufficient here in the Territory. Now, I think that the better line of authorities, your Honor, is that—of course, there is another matter, a secondary matter which your Honor dealt with, where there is a revocation, that under the authorities cited in American Jurisprudence you cannot introduce the prior will. But the authorities further cite that if in case it is a defectively made will, then that may be introduced as evidence.

This is under the statute of frauds. What is a sufficient memorandum? The subject of wills is covered.

“Wills.—An instrument in the form of a will may itself constitute a written offer by the testator to sell land and as such be binding under the statute, on its due acceptance by the purchaser.” [241]

We are not involved in that.

“We stated elsewhere, an agreement to devise land is within the provisions relating to contracts for the sale of an interest in land, and an agreement to leave personal property is within the provision relating to the sale of goods, etc.—”

It says “and so forth”.

“According to some authorities, if a will is in fact executed by the promisor, in pursuance of the agreement and referring thereto, this constitutes sufficient written evidence of the oral agreement to take it out of the operation of the statute, since such an instrument is dual in its character; that is, it is partly contractual and partly testamentary, especially where the will is delivered to the promisee as

evidence of and in compliance with the agreement. It has been held in a number of cases that where a will, executed by the party to be charged pursuant to a verbal agreement as to the disposition after death of property owned by him, recites the terms of the agreement, it is a sufficient memorandum in writing to satisfy the statute, although never delivered, and irrespective of its validity or continued existence as a will. However, the rule that a will constitutes a sufficient memorandum to take an agreement to bequeath property out of the statute of frauds is subject to limitations in these respects in some jurisdictions. It is held that an unexecuted will does not satisfy the requirement of the statute for a memorandum, notwithstanding services have been performed in reliance upon the contract, and that the statute of frauds is not satisfied by a will made pursuant to an oral agreement to devise lands, where the will is subsequently revoked. It has been held in England that an unattested will is not sufficient to take a verbal promise to devise land out of the statute.

“According to some authorities, if the will makes no reference to the oral agreement and its possession is retained by the promisor, although it may have been made in pursuance of the agreement, it will not constitute a sufficient written memorandum thereof to take the agreement out of the operation of the statute. The view is that a potential factor in furtherance of fraud would be engendered were a will containing a simple bequest per-

mitted to operate as evidence of a binding contract to make such a bequest.

“The loss of a will constituting a memorandum of an oral contract to leave property to another does not render the contract unenforceable.”

And in the footnote:

“It is deemed immaterial that the instrument executed by the promisor is ineffectual as a will due to informalities in its execution.

“A will for some reason ineffective upon the death of the [243] testator, which makes no mention of the terms of the contract in pursuance of which it is alleged to have been executed, is insufficient to serve as memorandum of such contract.”

Now, your Honor, I cited these two Kansas cases because they expressly hold that in Kansas you don't have to so recite it in the agreement.

The Court: We have no specific authority here in Hawaii other than the case you cited to me, the one from Hilo.

Mr. Kashiwa: *Vierra versus Shipman*, 26 Hawaii 369.

The Court: That is the closest that our jurisdiction has ever come.

Mr. Kashiwa: The court refused to review that question.

The Court: Well, I am still bothered by this thing. How is it relevant to your theory of the case? You claim, and your star witness testified, that the gift was made. Now, if it was made, it seems to me that what you are trying to do by this offer is to establish a promise to do what your witness says was done.

Mr. Kashiwa: Yes, your Honor. This is it. A gift was made. But that gift, your Honor, we admitted there was no executed deed; it was an oral gift of real property, which I will show is perfectly possible under the decisions. Now, in order to substantiate that, your Honor, there is evidence that he intended to make a gift of that nature. I cannot let my case stand on just evidence that a gift was made. I think [244] it is wise procedure for any counsel to substantiate his evidence with actual facts of what happened. And this will substantiate the prior promise when this boy quit school. And that promise was made and he relied on it. And true enough, the father had a will to satisfy one side of the promise. And he did perform it. But, your Honor, there is such a thing as denial of a gift. A gift is denied in this case by a general denial, specific denial. It is my contention that we have the right to prove that there was a gift made, and in order to corroborate that evidence, your Honor, we can produce other evidence to show that there was such a thing; and especially where there is a lot of this testimony that is parol, your Honor, whenever we can introduce written evidence to show credence to that testimony, your Honor, I think that particular document should be received.

The Court: In other words, you are offering this will as a written document supporting the existence of the promise that you claim was made by the father to the son?

Mr. Kashiwa: Yes. And then there was an execution of that promise. But to show that there was



such a promise to begin with, I am introducing this evidence as circumstantial evidence to corroborate the entire situation there, your Honor. It has been a very difficult case for me to prove, your Honor. It is a thing which happened many, many years ago. And here there is a will which was signed; one of the witnesses testified [24] as to the father's signature. Now, without this will—well, if he was going to give it to you when he died, well, it won't go to you, it would go to all the children. There would be no use of his working after he finished school, working over there when the father didn't make a will, your Honor. Of course, the promise was partially executed when that store was transferred. He became 20 years of age. And I believe that there is nothing to prevent a prior execution of the promise of that nature. The store was given to him.

Your Honor, it has been a very difficult case to prove all this by parol; that happened many, many years ago. And there was this parol, it is our contention, this parol promise, your Honor. And this helps our case a great deal.

The Court: Well, certainly if this Exhibit 1 for identification made reference to this promise, it would be much stronger evidence than it is standing silent.

Mr. Kashiwa: But I have cited that Kansas case. Some courts allow it, your Honor. And it seems to me where the background is supported not only by this particular will but other specific acts in addition to the parol testimony, corrobo-

rating the entire situation, your Honor, it is my contention that that should be allowed.

The Court: It is very, very novel. Anything else you want to say?

Mr. Gross: If the Court please, I think one of the [246] significant things that——

The Court: Before you say anything, let me say this for guidance: As I now understand it, and see it perhaps a bit clearer than I have previously, this will which is offered—as to which one of the witnesses has identified the father's signature—is offered not to prove anything, as I understand it, save and except that it tends to prove the existence of the promise which the Plaintiff has testified to as having been made to him by his father under the facts and circumstances outlined in his testimony. Right?

Mr. Gross: Well, I think if we keep in mind two things: if we will consider all of the written documents, documents which were made at the time when there was no law suit pending and people were not trying to create an impression—we'd get a little better perspective if we keep the dates in mind. This will is dated prior to the time of the real estate, prior to the time the real estate was acquired, which is the subject matter of this law suit. So if the theory of the Plaintiff in this law case is that this will is a memorandum of a promise to give this real estate to the Plaintiff, then obviously the will is dated prior to the time the title to the real estate was acquired.

The Court: I don't understand it to be offered

to prove that. That bothered me this morning. But I don't now understand it to be offered for that purpose. [247]

Mr. Gross: Well, what is the offer?

The Court: To prove the promise.

Mr. Gross: To prove a promise? Well, the plaintiff's theory of this law suit is not that there was a promise but there is an executed promise.

The Court: Well, that is another leg of contention.

Mr. Gross: That the gift was actually made in 1935.

The Court: That I believe to be his contention. But at the moment this is offered, if I now understand it clearly, simply to prove the promise as outlined by the Plaintiff in his testimony, is that right?

Mr. Kashiwa: Yes, your Honor.

The Court: And only that. Now, in another phase of his case he says that under that promise this particular part of the promise did not become effective because the other part became effective since the father went to Japan and the man actually made the gift to the son. But this simply tends to prove, he says, that there was this promise with the two alternatives, one, that something would happen if the father went permanently to Japan, and, two, this if he died.

Mr. Gross: Well, if the Court please, I think I have stated our position.

The Court: But I am not too sure you are meeting the basis on which it is offered.

Mr. Gross: Well, I am trying to confine this thing to [248] the issues which are before this Court, namely, that in 1932 the Plaintiff's father acquired a piece of real estate, and record of title of that real estate remained in the Plaintiff from 1932 until 1947; that in 1938 a right of way adjoining the real estate was acquired in the name of the Plaintiff. We vested this.

Mr. Kashiwa: In the name of the father.

Mr. Gross: In the name of the father, rather; the same person who had acquired in 1932. We vested this real estate. The Plaintiff comes in and says: You vest that real estate as the property of Kaneichi Nii; that is not the real estate of Kaneichi Nii; that is the real estate of Shoso Nii; my father gave it to me. And in his pleading he stated that his father gave it to him in 1933, after that will was executed. And then on his testimony, after he had had an opportunity to examine what had developed in the Court and in the preliminary motions, he changed his testimony to state that his father gave him the real estate in 1935. And then when his father was asked last month of this year about the real estate, his father says he didn't give it to him; he gave him a power of attorney.

The Court: Well, those are other phases of the case that don't relate to this offer.

Mr. Gross: Now, one minute after the ink was dry on that paper, that will could be ineffective as a memorandum. [249]

The Court: By—

Mr. Gross: By the father simply writing "cancelled" across it or drawing another will.

The Court: But in the absence of evidence to that effect, am I not entitled to presume that it is still effective?

Mr. Gross: This is not a probate proceeding, if the Court please. This is a suit under Section 9 of the Trading with the Enemy Act.

The Court: But here is at best a memorandum with the father's signature on it.

Mr. Gross: The memorandum does not specifically refer to this real estate.

The Court: Right.

Mr. Gross: It refers to all of his property. And the Court in its wide experience learned that all fathers hope that the time will come, I suppose, when we can either to one or more than one son make a document which is very much like that, perhaps a little bit longer, hoping we will have more property, let us say, or less property.

The Court: Or more.

Mr. Gross: That seemed to take care of quite a bit of property, too. I cannot see under any theory of the case—Mr. Kashiwa rightly tries to keep two strings to his boat. If his theory is that this was a memorandum of a promise, it was made before the man even acquired the property which we [250] are talking about; and the memorandum doesn't even refer to the property. I don't believe he will find any case in which they say that just a general memorandum—there must be something specific.



The Court: You are touching, as I get it now, on this proposition that where I have a piece of property and promise you that I will give it to you or sell it to you or convey it to you, unless I sign my name to some written piece of paper identifying that promise, you can't do anything about getting it.

Mr. Gross: Well, a court, this Court must be able, by referring, be able to say it refers to a particular piece of property.

The Court: That isn't what I am trying to get at. With reference to the Plaintiff's theory here that there was a promise, I get a glimmer of the fact that you are contending that even if that promise did exist, even if this document were in evidence of that promise, that it could have no effect upon the property which is the subject matter of this dispute because the property involved was not at the time of the promise owned by the father.

Mr. Gross: That's right. And that subsequently after the property was acquired the acts of the father indicated a contrary intention.

The Court: That may be. [251]

Mr. Gross: Well, I think you have to eliminate the possibility that he was making a promise to acquire, to attach, to acquire property. And I wonder whether under the law of contracts or gift or whatever it may be that two parties—and the Plaintiff at that time I think was an infant, but we will not discuss that because I don't think it is relevant—two parties can make a promise with reference to

a piece of real estate that is not in existence as far as the two parties are concerned. Can I promise to give you something that I don't own except in general terms? If his father said to him, "Son, I am going to buy that property over there and when I get it I am going to give it to you," then I think—and he had described that out in the will or had said including property that I am going to buy, then I think you have got a different proposition. But how can I make a memorandum of an agreement to give something I don't own?

The Court: Well, again Mr. Kashiwa would say to you, don't concentrate on that, for the only purpose for which I am offering this is to prove that there was a promise made to give to the son at some time in the future whatever the father had in Hawaii; and that that gift, that promise of a gift of such property had as a due date or due dates, one, either the time when he left permanently for Japan or, two, when he died. Now, I repeat, Mr. Kashiwa isn't contending that this exhibit for identification proves the gift. It simply proves the [252] nature of the promise.

Mr. Gross: I don't believe it even does that.

The Court: Well, that at best——

Mr. Gross: I don't believe it even does that. I think it is a standard form of will which your Honor, Mr. Kashiwa and myself and all the other counsel in the courtroom are thoroughly familiar with. It is known, as some client of mine calls it, a one-page will; they want to get it all on one page so that it is short and simple and it is the

natural will which a Japanese father would make out for his only son. And you had the additional facts that in 1933, in spite of the fact that he had made out this will, that he still made a bill of sale. He didn't think that this was a sufficient memorandum to take care of the store.

The Court: Oh, no. This would only be of some importance as a memorandum to take the case out of the statute of frauds if the son had some basis of suing the father on the promise to give.

Mr. Gross: That is where I think Mr. Kashiwa has confused, I think, the issues here. This is not a suit for specific performance. This is not a suit for breach of contract. This is not a suit to declare constructive trust.

The Court: But let me interrupt. In sum and substance again he is offering this as evidence that the Plaintiff's story, the Plaintiff's testimony as to his promise isn't made [253] out of thin air. The Plaintiff has said, my father said this and here is some evidence of the fact that he did act in accordance with the promise that he made to me. It bolsters up the Plaintiff's testimony.

Mr. Gross: I can't see that it is admissible under any theory. It is a will that would ordinarily be in the possession of the person that made it. It is ambulatory. As I stated before, it is no longer effective. After the ink is dry, after writing a sentence, I hereby cancel this will under such date, some such writing like that. And if it is being introduced for the purpose of showing a chain of events, if that is what we are talking about, a

chain of events, I remind the Court that this is not a suit for specific performance, this is not a suit to establish a constructive trust, this is not a probate proceeding. But the Alien Property Custodian has filed a vesting order in which it is found that certain real estate is the property of Kaneichi Nii. The Plaintiff comes in and says it is not the property of Kaneichi Nii, it is my property, he gave it to me; and then on the stand the Plaintiff states further, he gave it to me in 1935 just before he left for Japan, orally. Now, if the Plaintiff's father gave him the real estate—that's all there is to it. Then he doesn't need this. If he didn't give him the real estate, then this is immaterial anyway.

The Court: I can't at the moment see the materiality of [254] it other than as corroborating the testimony of the Plaintiff, and I gather that finally is the sole basis on which it is offered—right?

Mr. Kashiwa: Yes, your Honor.

The Court: For that purpose and that purpose only, as corroborating the testimony of the Plaintiff in respect to the promise that his father made to him, for that limited purpose, I repeat—I am not admitting that it is or isn't a sufficient memorandum to take the case out of the statute of frauds or sufficient document to constitute a will under the laws of the Territory of Hawaii—I will receive it for that limited purpose, corroborating the Plaintiff's testimony. It, therefore, may become, Mr. Clerk—

The Clerk: Plaintiff's Exhibit "P."

(The document referred to was received in evidence as "Plaintiff's Exhibit P.")

[Printer's Note: Plaintiff's Exhibit P is set out in full at page 461 of this printed Record.]

Mr. Kashiwa: May I substitute the copy?

The Court: Yes.

Mr. Gross: Is it satisfactory to the Court if Mr. Adachi and Mr. Nii should prepare that? I think that should be letter perfect, the document.

The Court: I understood that there had been some comparison of the copy.

Mr. Gross: Let them step outside to prepare our copy. It should be letter perfect. I don't think it is necessary [255] for me to take an exception on the ruling of the Court on the admission of the will.

Mr. Kashiwa: It is an equity case.

Mr. Gross: Under the rules it is assumed that all rulings are excepted——

The Court: If there should be any doubt about it.

Mr. Gross: May the record show that I am taking an exception to the ruling.

The Court: Did somebody say that this was an equity law?

Mr. Kashiwa: Section 9(a).

The Court: All right. Now the evidence stands submitted on both sides. All the loose ends have been tied up. There is going to be no motion to reopen or anything?



Mr. Kashiwa: One motion, your Honor. The original petition—the amended complaint which I filed on the day of the trial, yesterday, I ask leave of this Court to be permitted to file that complaint, your Honor.

The Court: Now?

Mr. Kashiwa: Now.

The Court: Why?

Mr. Kashiwa: Under Rule 15 I am permitted, to meet the evidence in the case, your Honor. My contention is that it should be amended to meet the——

The Court: I can't see anything in your amended complaint which I have ruled on at the inception of the trial that, as [256] you tell me, changes the theory of your case one iota, but does in the amended complaint set forth certain facts and factors which you have proven. And to me it is out of order to plead evidence on the complaint. I am going to, therefore, on the theory that you are neither harmed nor prejudiced by the denial again deny your motion to amend the complaint.

Mr. Kashiwa: Yes, your Honor.

The Court: All right. We are ready for final argument.

Mr. Gross: For the purpose of the record I'd like to make a motion for a directed finding at the close of all the evidence.

The Court: A directed finding?

Mr. Gross: A directed finding in favor of the Defendant, on the complaint and answer, at the close of all the evidence. I should also like to

make a motion for a directed finding at the close of all the evidence on the counter-claim of the Plaintiff and the counter-Defendant's answer thereto.

Mr. Kashiwa: This, your Honor, is not a jury trial. Direct whom?

The Court: Well, whatever it is,—I am not sure I understand it completely either—but the same arguments that you are going to make basically are going to be made on the motion. So I will hear both of them together, unless you want to be heard.

Mr. Gross: No, I just wanted the record to show—— [257]

The Court: I will reserve my ruling on that and examine it later. All right, Mr. Kashiwa, let me hear your opening argument. Let me see the complaint, Mr. Clerk. I want, before you go very far in your argument, to review the allegations of the complaint and tell me wherein you believe you have proven the allegations.

(Mr. Kashiwa presented his opening argument on behalf of the Plaintiff.)

December 1, 1948

(Mr. Kashiwa continued with his opening argument on behalf of the Plaintiff.)

(Mr. Gross presented his argument on behalf of the Defendant.)

(Mr. Kashiwa presented his closing argument on behalf of the Plaintiff.)

The Court: I do not feel in this matter that I need the assistance of legal briefs, for two reasons: one, the Plaintiff here has the burden of convincing the Court by preponderance of evidence that the allegations of the complaint are true and correct, by a preponderance of credible evidence. Ingenious as is the legal theory upon which the Plaintiff bases his case, the proof that has been adduced by the Plaintiff does not bring conviction to my mind that in fact a gift of this real property was made to him by his father. [258]

Secondly, assuming that an equitable gift of the property was made by the father to the son in 1935, the acts and actions of the father subsequent to that date do not support the Plaintiff's contentions. Indeed, the father testifying in this case does not in the slightest degree corroborate the Plaintiff's contentions here made. Over and beyond that, the acts of the father and of the Plaintiff himself during the years '35 to '47, at which time the Custodian vested the property, are contradictions of the theory here advanced.

I am satisfied that the father was an intelligent person, though he may have been uneducated, and did well in his business at Waipahu; and, as has been pointed out, he knew what to do when he wanted to effectively dispose of property, for prior to going to Japan in 1933 he properly and duly executed a bill of sale to the store in favor of his son. And I am certain that preparing to go to Japan permanently, if he had promised his son, as the son contends, that prior to leaving he cer-

tainly would have taken steps to execute the proper deed of the real property in Hawaii to his son; he certainly knew how to execute a will to take care of the disposition of his property after death.

Further, in 1939, though he here now claims the property was equitably his since 1935, the son conferring first apparently with someone here in Honolulu who purported to advise him legally, the son asked the father not for a deed to the property [259] which he claimed was given to him but rather for a power of attorney from the father and the mother to deal with the parents' property here in Hawaii.

All of those facts and factors which I have outlined lead me to the conclusion that the Plaintiff has not substantiated by credible proof the allegations of the complaint. And further, assuming that he had, I am still satisfied, as indicated in my Fujino decision, that the Alien Property Custodian with respect to real property stands in the position of a purchaser for value and is protected by the recording statute of the Territory.

Those being my conclusions and findings, the Court will approve findings of fact and conclusions of law consistent with this outline of my opinion and will sign them upon presentation, and will include an order previously held up directing the Plaintiff to turn over to the Custodian the rents that have come into the Plaintiff's possession since the time when the Plaintiff collected the rents from his father's property. In other words, the turn-over directive that heretofore has been denied will at this time be granted. And I will sign an order to that effect on presentation.

Mr. Kashiwa: Your Honor, at this time, for the purpose of the record, may I except to your Honor's oral decision as being contrary to the facts and law, and at this time I wish to note an appeal to the 9th Circuit Court. [260]

The Court: Very well. The record may note that fact, those facts.

Mr. Gross: I gather that the Court would like us to prepare findings of fact.

The Court: Prepare the findings of fact and conclusions of law, and I will in all probability reduce my oral opinion to writing.

(The Court adjourned at 11:00 o'clock a.m.)

### REPORTER'S CERTIFICATE

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows: that the foregoing is a true and correct transcript of proceedings in Civil No. 837, Shoso Nii vs. Tom C. Clark, held in the above-named court beginning with November 29, 1948, before the Hon. J. Frank McLaughlin, Judge.

Feb. 10, 1949.

/s/ ALBERT GRAIN.

[Endorsed]: Filed Feb. 10, 1949.



## PLAINTIFF'S EXHIBIT "A-1"

(Claimant's Copy.)

United States of American  
Office of Alien Property Custodian

NOTICE OF CLAIM FOR RETURN  
OF PROPERTY

Note.—All answers to questions on this form (except names and addresses) must be in English. Amounts of money must be stated in dollars. Copies of documents must be accompanied by English translations. This notice is repeated below in French and German.

Avis: Toutes les reponses aux questions ci-dessous doivent etre faites en anglais, sauf en ce qui concerne les noms et adresses. Le montant des sommes doit etre indique en dollars (Etats-Unis). Une traduction en anglais doit etre jointe a chaque document.

Zur Kenntnissnahme: Alle Antworten auf die Fragen auf diesem Formular (mit Ausnahme von Namen und Adressen) müssen in englischer Sprache gegeben werden. Geldeträge müssen in Dollars (Amerikanische Währung) angeführt werden. Falls Abschriften von Schriftstücken unterbreitet werden, müssen Übersetzungen in englischer Sprache beigelegt werden.

Please read the accompanying explanation and instructions before filling out the form:

1. (a) Claimant's name, Shoso Nii. (b) Address, P.O. Box 416, Waipahu, Oahu. (c) Has claimant filed any other form claiming the same property? No.

\* \* \* \*

Plaintiff's Exhibit "A-1"—(Continued)

2. (a) Claimant's agent( if any), Attorney Shiro Kashiwa. (b) Agent's address, 307 Hawaiian Trust Bldg., Honolulu 48, T. H. (c) Is agent authorized to receive payment of money or delivery of property, if returned? No.

\* \* \* \*

3. Fees for prosecuting this claim: I have promised to pay Attorney Shiro Kashiwa a sum much less than 10% of the value of the property claimed as fee. Part of this has been paid.

4. Value of property claimed: Approximately \$30,000.00.

5. Payments for material or services supplied, or patents licensed, to or for the United States Government: None.

6. Vesting order by which the Alien Property Custodian acquired the property (if known): No. 9777.

7. Identification of property claimed: See attached supplement Exhibit A.

8. Are claimant's rights in the property subject to any condition or encumbrance? No.

9. Characterization of claimant.—Answer this item by filling out schedule 9A or 9B. If the claim is filed by an individual, fill out schedule 9A, describing him. If the claim is filed by a group of individuals (such as co-owners or partners), fill out a separate schedule 9A for each member of the group. If the claimant is a corporation or association, fill out schedule 9B.

Owner of property on vesting date.—

(a) Give the vesting date. September 12, 1947.

(This means the date when the Alien Property

## Plaintiff's Exhibit "A-1"—(Continued)

Custodian took over the property which you are now claiming. If you do not know that date, use the approximate date on which your property was taken, followed by the word "approximately." If you do not know even the approximate date, write "December 7, 1941," and use this as the vesting date in answering questions in this item and in item 11.)

(b) Check the one of the following statements which applies to your claim:

[X] (1) The claimant was the owner of the property on the vesting date. See Exhibit B.

.... (2) The claimant is the legal representative or successor of an individual who owned the property on the vesting date.

.... (3) The claimant is the legal representative or successor of a corporation which owned the property on the vesting date.

(If you checked number (1) above, do not use schedules 10A or 10B, but go directly to item 11. If you checked number (2) above, fill out schedule 10A. If you checked number (3) above, fill out schedule 10B.)

11. Chain of title to property.—Describe below the last transfer of title to the property. (Omit any transfer already described in Schedule 10A or 10B.)

(a) Date: On or about May 5, 1935.

(b) By whom transferred: Kaneichi Nii.

(c) To whom transferred: Shoso Nii.

(d) Nature and terms of transfer: Gift under principle of equitable transfer of property by way of gift and by way of adverse possession under the laws of the Territory of Hawaii.

## Plaintiff's Exhibit "A-1"—(Continued)

(e) Consideration actually paid: None; to be paid: None.

(f) If officially recorded or registered, give citation: Due to the nature of the transaction it was not recorded.

If there have been any other transfers of the property since March 1, 1938, give the same information about these other transfers, using a supplement.

Attach a copy of each document of title, and of any contract pursuant to which a transfer was made, to each copy of your form. Photographic copies are preferred. If documents are in a foreign language, English translations must also be attached.

12. Other relevant information.—If there are any other facts of which you want to advise the Custodian, write them on a separate sheet of paper under the heading "Supplement to item 12." You may also attach copies of any documents not previously referred to, and mark them in the same way.

13. Affidavit.—The undersigned makes the following declaration under the penalties of perjury and false swearing:

(a) Check the one of the following statements which applies, and strike out the others:

[X] (1) I am the claimant named in item 1.

\* \* \* \*

(b) The facts set forth in the foregoing form and in all attached supplements and schedules are true, and all attached documents are true copies of the originals, to the best of my knowledge and belief.

(c) I have no knowledge of any fact called for by the foregoing form, schedules, and instructions which is not fully set forth.

## Plaintiff's Exhibit "A-1"—(Continued)

(d) To the best of my knowledge and belief, the property claimed was not at any time after September 1, 1939, held or used pursuant to any arrangement to conceal any interest of an enemy of the United States.

Signature:

/s/ SHOSO NII.

Name of signer:

SHOSO NII.

14. Notarization.—The foregoing declaration was subscribed and sworn to (or affirmed) before me this 29th day of November, 1947.

(Seal)        /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1951.

## Schedule 9A

(Supplementing Form APC-1A, Item 9)

(Claimant's copy.)

CHARACTERIZATION OF INDIVIDUAL  
CLAIMANT

(a) Name: Shoso Nii; (b) Date of birth: 3rd, January, 1914. (c) Place of birth: Waipahu, Oahu, Territory of Hawaii. (d) If claimant has been outside the United States (including its Territories and possessions) at any time since December 7, 1941, give the name of each country in which he was present, and the principal address at which he stayed in that coun-



## Plaintiff's Exhibit "A-1"—(Continued)

try, as follows: Country, Japan, from 28th, June, 1941, to 8th, November, 1947.

Note: Throughout the above period claimant was a resident of Waipahu, Oahu, Territory of Hawaii. He left for Japan in June, 1941, for a temporary visit and was unable to return until November 8, 1947.

\* \* \* \*

(e) Has the claimant transacted any business since December 7, 1941, personally or by agent, in Germany, Japan, Italy, Hungary, Rumania, or Bulgaria? No.

\* \* \* \*

If the claimant has ever been a citizen of Germany, Japan, Italy, Hungary, Rumania, or Bulgaria, answer also the following question (other persons do not answer):

Has the claimant transacted any business since December 7, 1941, personally or by agent, in territory occupied by any of these nations? No.

\* \* \* \*

(f) Claimant's present citizenship (name of country): United States of America.

Explain below how your citizenship was acquired—by birth, marriage, naturalization, etc., and give the date. Naturalized citizens should give the number of their naturalization papers. Stateless persons should cite the official act by which they were deprived of citizenship, and supply a copy if possible: By birth on January 3, 1914.

If the date given above is after December 7, 1941, explain below how your prior citizenship status was acquired:

## Plaintiff's Exhibit "A-1"—(Continued)

[Printer's Note: Exhibit A is similar to Exhibit A, to Complaint, printed in full at page 13 of this printed Record.]

## EXHIBIT B

Although the title of the property was in the name of Kaneichi Nii as of the date of the vesting order, the property was really the property of the claimant. The father in Japan gave the property to the claimant on or about May 5, 1935, when the father returned to Japan and because of such gift the claimant has collected all rents, paid all taxes, possessed the property and made improvements thereon. Claimant claims that under equitable principles in any court of equity the claimant is the real owner of the property. Claimant is also the owner of the property by way of adverse possession under the laws of the Territory of Hawaii. He held the property openly adversely against the entire world for more than 10 years after May 5, 1935.

---

## PLAINTIFF'S EXHIBIT "A-2"

Office of Alien Property  
Department of Justice, Washington, D. C.

January 26, 1948

Mr. Shiro Kashiwa  
307 Hawaiian Trust Bldg., Honolulu 48, T. H.

Dear Sir:

The Office of Alien Property, Department of Justice, has received and placed on file the notice of the undernoted claim, as of the date of receipt stated.

## Plaintiff's Exhibit "A-2"—(Continued)

The filing of the notice of claim does not, of course, constitute a determination of its nature or validity. All correspondence should hereafter bear the claim number indicated.

Inasmuch as a substantial number of claims are now pending, it is not possible at this time to state when any particular claim will be acted on by this Office. If any further action by the claimant is necessary in connection with consideration of the claim, the claimant will be so informed by letter addressed as above, and this Office will not take any final adverse action on the claim without transmitting notice of opportunity to be heard.

The Claim has tentatively been entered as follows on the records of this Office:

Claim No.: 31530; Name of Claimant: Shoso Nii;  
Date of Receipt: December 2, 1947.

Vesting Order No.: 9777; Account No.: 39-26717;  
Summary of Claim: Real property situated at Wai-kolo, Waipahu, Oahu, T. H. Certain debt owing to Kaneichi Nii, also known as Konichi Nii by Shozo Nii.

Very truly yours,

/s/ DAVID L. BAZELON,

Assistant Attorney General; Director, Office of Alien Property.

Rec'd 2/10/48.

## PLAINTIFF'S EXHIBIT "C"

Liber 1662, Page 293

## POWER OF ATTORNEY

Know All Men By These Presents:

That I, Shoso Nii of Waipahu, City and County of Honolulu, Territory of Hawaii, have made, constituted and appointed, and by the presents, do hereby make, constitute and appoint Katsutoshi Mikami of Honolulu, T. H., my true and lawful attorney for me and in my name, place and stead, and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; and have, use and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by legal process, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds, and other assurances in the law therefor; and to lease, let, demise, bargain, sell, release, convey, mortgage and hypothecate lands, tenements and hereditaments; upon such terms and conditions, and under such covenants as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in

## Plaintiff's Exhibit "C"—(Continued)

possession or in action; and to make, do and transact all and every kind of business of what nature and kind soever; and, also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debts, and such other instruments in writing of whatever kind and nature, as may be necessary or proper in the premises.

Giving and Granting unto my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, I hereby ratifying and confirming all that my said attorney shall do, or purport to do in the premises.

That I further empower and authorize Katsutoshi Mikami to employ and appoint attorney, agent, or employee to represent and or assist him to execute and carry out the foregoing powers.

In Witness Whereof, I have hereunto set my hand this 24th day of June, A.D. 1941.

/s/ SHOSO NII.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 24th day of June, 1941, before me personally appeared Shoso Nii, to me known to be the



Plaintiff's Exhibit "C"—(Continued)  
person described in and who executed the foregoing  
instrument and acknowledged that he executed the  
same as his free act and deed.

(Seal)           /s/ PHILIP M. NAGATORI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

Entered of Record this 7th day of August, A.D.  
1941, at 2:04 o'clock p.m. and compared. Mark N.  
Huckestein, Registrar of Conveyances.

Internal Revenue Service

FORM 1040

Internal Revenue Service

Page 1

38

# UNITED STATES INDIVIDUAL INCOME TAX RETURN 1938

 837  
nt. Exh  
" "  
tted  
-48

 FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,  
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM  
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1938

or fiscal year beginning \_\_\_\_\_, 1938, and ended \_\_\_\_\_, 1939

(Before Preparing This Return, Read the Instructions Carefully)

 To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third  
month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY (See Instruction E)

(Name) (Use given names of both husband and wife, if a joint return)

W. J. H. H.

(Street and number, or rural route)

P. O. Box 1164

7th St. N.

(Post office)

(County)

(State)

DUPLICATE COPY

IMPORTANT

↓

 One duplicate copy  
must be filed with origi-  
nal return.

 (\$5 will be assessed if  
duplicate is not filed.)

## INCOME

and other compensation for personal services. (From Schedule A)

nds.

nt on bank deposits, notes, mortgages, etc.

t on corporation bonds.

e interest on Government obligations, etc. (From Schedule B)

(or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses).

b names and addresses):

from fiduciaries. (Furnish names and addresses):

nd royalties. (From Schedule C)

(or loss) from business or profession. (From Schedule D)

short-term gain from sale or exchange of capital assets. (From Schedule F)

long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)

 gain (or loss) from sale or exchange of property other than capital assets. (From  
Schedule C)

income (including income from annuities). (State nature; use separate schedule if necessary)

total income in items 1 to 11. (Enter nontaxable income in Schedule I)

## DEDUCTIONS

ations paid. (Explain in Schedule H)

(Explain in Schedule H)

(Explain in Schedule H)

from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)

ts. (Explain in Schedule H)

uctions authorized by law. (Explain in Schedule H)

total deductions in items 13 to 18.

et income (item 12 minus item 19)

## COMPUTATION OF TAX

me (item 20 above)

rsonal exemption.

From Schedule J-1)

edit for dependents.

From Schedule J-2)

surtax net income)

rest on Government obliga-

ons, etc. (See Instruction 25)

med income credit.

from Schedule K-1 or K-2)

subject to normal tax

28. Normal tax (4% of item 27)

29. Surtax on item 24. (See Instruction 29)

30. Total (item 28 plus item 29)

 31. Total tax (item 30, or if you had a net long-  
term capital gain or loss, enter line 16, Sched-  
ule F)

32. Less: Income tax paid at

source

Income tax paid to a foreign

country or U.S. possession.

(Attach Form 116)

34. Balance of tax (item 31 minus items 32 and 33)

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Pg. 1 # 11 Furniture Bank 87  
 Pg. 1 # 12 Rep. 174 289.55 5.00 Bus. 273.90 0.17 277.78  
 Pg. 1 # 16 Rep. 174 57

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction 12)

1. Source of income

2. Nature of income

3. Amount

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption

(2) Credit for Dependents

Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year		Credit
				Under 18 years old	Over 18 years old	
Single, or married and not living with husband or wife		\$ 1.50	Wanda Ann	10		\$ 4
Married and living with husband or wife	11	1.50				
Head of family (explain below)						

Reason for support

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

1. Total receipts (state nature of business or profession)

\$ 211.50

COST OF GOODS SOLD

2. Labor	\$	
3. Material and supplies		18.11 83
4. Merchandise bought for sale		
5. Other costs (itemize below)		
6. Plus inventory at beginning of year		16.07 15
7. Total (lines 2 to 6)	\$	19.73 98
8. Less inventory at end of year		13.51 50
9. Net cost of goods sold (line 7 minus line 8)	\$	18.25 74

OTHER BUSINESS DEDUCTIONS

10. Salaries not included as "Labor" (do not deduct compensation for yourself)	\$	
11. Interest on business indebtedness		87
12. Taxes on business and business property		54.6 18
13. Losses (explain below)		
14. Bad debts arising from sales or services		
15. Depreciation, obsolescence, and depletion (explain in Schedule E)		65.7 90
16. Rent, repairs, and other expenses (itemize below or on separate sheet)		16.5 1.78
17. Total (lines 10 to 16)	\$	268.6 93

Enter "C," or "C or M," on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

18. Total deductions (line 9 plus line 17)

19. Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1)

\$ 36

Explanation of deductions claimed in lines 5, 13, and 16: Net 510.00, Auto Exp 324.11, Light & Tel 273.16, Rent 13.50, W. & L. 12.12, Bus. 273.90, 14.72

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowed
Auto & Truck	1930-38	1850	None	1330	520	5		2
Truck & Car	"	2063	"	939.61	1123.39	10		2
Auto & Truck	1936	1116	"	2200	845	10		6

Schedule F.—GAINS AND LOSS FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 1)

1. Date of sale 2. Description 3. Gain or loss

RM 1040  
 Treasury Department  
 Revenue Service

# UNITED STATES INDIVIDUAL INCOME TAX RETURN 1939

Page 1

(Auditor's Stamp)

Div. 837  
 Plaintiff, Exh  
 "D-2"  
 Admitted  
 1-29-48

FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,  
 DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM  
 OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

or fiscal year beginning \_\_\_\_\_, 1939, and ended \_\_\_\_\_, 1940

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third  
 month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

(Name) *Sharon New*  
 (Use given names of both husband and wife, if this is a joint return)

*Wagoner, 6400*  
 (Street and number, or rural route)

*P. O. Box 1164*  
 (Post office)

(County)

(State)

DUPLICATE COPY

IMPORTANT



One duplicate copy  
 must be filed with orig-  
 inal return.

(\$5 will be assessed if  
 duplicate is not filed.)

## INCOME

Salaries and other compensation for personal services. (From Schedule A)

Dividends

Interest on bank deposits, notes, mortgages, etc.

Interest on corporation bonds

Dividend interest on Government obligations, etc. (From Schedule B)

Capital gain (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses).  
 (Furnish names and addresses):

Income from fiduciaries. (Furnish names and addresses):

Patents and royalties. (From Schedule C)

Gain (or loss) from business or profession. (From Schedule D)

Net short-term gain from sale or exchange of capital assets. (From Schedule F)

Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)

Net gain (or loss) from sale or exchange of property other than capital assets. (From  
 Schedule G)

Income (including income from annuities) (State nature)

Total income in items 1 to 11. (Enter nontaxable income in Schedule I)

## DEDUCTIONS

Contributions paid. (Explain in Schedule H)

Charitable contributions. (Explain in Schedule H)

Interest on Government obligations, etc. (Explain in Schedule H)

Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)

Charitable contributions. (Explain in Schedule H)

Deductions authorized by law. (Explain in Schedule H)

Total deductions in items 13 to 18

Net income (item 12 minus item 19)

## COMPUTATION OF TAX

Net income (item 20 above)

Personal exemption.

From Schedule J-1

Credit for dependents.

From Schedule J-2

Surplus net income

Interest on Government obligations, etc. (See Instruction 25)

Net income credit.

From Schedule K-1 or K-2

Subject to normal tax

28. Normal tax (4% of item 27)

29. Surtax on item 24. (See Instruction 29)

30. Total (item 28 plus item 29)

31. Total tax (item 30, or if you had a net long-  
 term capital gain or loss, enter line 16, Sched-  
 ule F)

32. Less: Income tax paid at  
 source

33. Income tax paid to a foreign  
 country or U. S. possession.  
 (Attach Form 1116)

34. Balance of tax (item 31 minus items 32 and 33)



Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of income	2. Amount	3. Expenses (itemize)	4. A
	\$		\$
Total of column 2 minus total of column 4 (enter as item 1, page 1)			\$

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction C)

1. Obligations or securities	2. Amount earned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Interest exempt from taxation	5. Interest (enter as item 1, page 1)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$	\$	All	XXXX
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			All	XXXX
(c) Obligations of United States issued on or before September 1, 1917			All	XXXX
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	XXXX
(e) United States Savings Bonds and Treasury Bonds			\$	\$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)			None	
(g) Total (enter as item 5, page 1)				\$

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (enter as item 1, page 1)
	\$	\$	\$	\$	\$

Explanation of deductions claimed in columns 4 and 5

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

(State business name and address if different from name and address on page 1)		19	
1. Total receipts (state nature of business or profession)		19	
COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
2. Labor	\$	10. Salaries not included as "Labor" (do not deduct compensation for yourself)	\$
3. Material and supplies		11. Interest on business indebtedness	
4. Merchandise bought for sale	15365 09	12. Taxes on business and business property	967 15
5. Other costs (itemize below)		13. Losses (explain below)	
6. Plus inventory at beginning of year	1351 50	14. Bad debts arising from sales or services	
7. Total (lines 2 to 6)	\$ 16716 59	15. Depreciation, obsolescence, and depletion (explain in Schedule E)	446 23
8. Less inventory at end of year	1242 12	16. Rent, repairs, and other expenses (itemize below or on separate sheet)	1729 29
9. Net cost of goods sold (line 7 minus line 8)	\$ 15474 35	17. Total (lines 10 to 16)	\$ 3142 47
If the production, manufacture, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C," "C or M," on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		18. Total deductions (line 9 plus line 17)	18
Explanation of deductions claimed in lines 5, 13, and 16		19. Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1)	\$

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year
Auto + Trucks	1939	\$ 1200 00	\$ 1200 00	\$ 1200 00	\$ 1200 00	5	5
Auto + Truck	3-1-38	2063 00		939 61	1123 39	10	-
Auto + Truck	1936	116 00		23 20	92 80	10	6
Auto + Trucks	"	100 00		60 00	40 00	5	



## Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Page 4

2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
Med. Ins. 223.61 D.P. 7.9549	\$	Eq 1 #13	Longway	\$ 14.26
Ins. 5.00 1.24.276.01			Auto. Insurance	5.50
Ins. 1.72.91 7.11 7.14 5.01			7.11	2.00
Eq. 7.14 13.72 7.14 Eq. 1.15	767.15			
				21.76

## Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction G)

1. Source of income	2. Nature of income	3. Amount
		\$

## Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption			(2) Credit for Dependents			
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year		Credit claimed
				Under 18 years old	Over 18 years old	
Married and not living with husband or wife	12	\$ 250.00	Wife Ann (4)	12		\$ 400.00
Living with husband or wife			John (2)			400.00
Family (explain below)			John	12		400.00
			Mary			400.00
			Reason for support if over 18 years old			1600.00

## Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is \$3,000 or less, use only this part of schedule		(2) If your net income is more than \$3,000, use only this part of schedule	
Item 20, page 1	\$	Earned net income (not more than \$14,000)	\$
Net income credit (10% of net income)		Net income (item 20, page 1)	
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)	

## QUESTIONS

- principal occupation or profession Ann 11/11/11
- whether you are a citizen ☐ or a resident alien ☐.
- a return for the preceding year, to which Collector's it sent? Ann
- if income or deductions of both husband and wife in this return? Ann
- name of husband or wife if separate return was made
- (b) Personal exemption, if any, claimed thereon \_\_\_\_\_
- (c) Collector's office to which it was sent \_\_\_\_\_
6. Check whether this return was prepared on the cash ☐ or accrual ☒ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "yes" or "no") Ann (If answer is "yes," attach statement required by Instruction J.)



FORM 1040  
Treasury Department  
Internal Revenue Service

# UNITED STATES INDIVIDUAL INCOME AND DEFENSE TAX RETURN

19

(Auditor's Stamp)

Civ. 837  
Plaint. Exh  
"D-3"  
admitted  
11-29-48

FOR GROSS INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,  
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM  
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning \_\_\_\_\_, 1940, and ended \_\_\_\_\_, 1941

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

*John Niv*  
(Name) (Use given names of both husband and wife, if this is a joint return)

*P. O. Box 1164*

(Street and number, or rural route)

*Waukegan*

(Post office)

*Ill.*

(County)

(State)

(Do not use these)

File  
Code  
Serial  
No.

District

(Cashier's Stamp)

Cash—Check—

First Payment

Item and  
Instruction No.

## INCOME

1. Salaries and other compensation for personal services. (From Schedule A) \$ *264.55*
2. Dividends \$ *51*
3. Interest on bank deposits, notes, mortgages, etc. *Per. Rate 1170.72*
4. Interest on corporation bonds
5. Taxable interest on Government obligations, etc. (From Schedule B)
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Furnish names and addresses): *Solomon - Waters - Right* \$ *90.00*
7. Income from fiduciaries. (Furnish names and addresses):
8. Rents and royalties. (From Schedule C) \$ *16.51*
9. Income (or loss) from business or profession. (From Schedule D) \$ *105.68*
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)
- (b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)
- (c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)
11. Other income (including income from annuities). (State nature)
12. Total income in items 1 to 11. (Enter nontaxable income in Schedule I) \$ *3,333.33*

## DEDUCTIONS

13. Contributions paid. (Explain in Schedule H) \$ *1.00*
14. Interest. (Explain in Schedule H)
15. Taxes. (Explain in Schedule H) *Per. Rate* \$ *5.00*
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)
17. Bad debts. (Explain in Schedule H)
18. Other deductions authorized by law. (Explain in Schedule H)
19. Total deductions in items 13 to 18
20. Net income (item 12 minus item 19) \$ *3,333.33*

## COMPUTATION OF TAX

21. Net income (item 20 above) \$ *3,333.33*
22. Less: Personal exemption. (From Schedule J-1) \$ *800.00*
23. Credit for dependents. (From Schedule J-2) \$ *1600.00*
24. Balance (surtax net income) \$ *1000.00*
25. Less: Interest on Government obligations, etc. (See Instruction 25)
26. Earned income credit. (From Schedule K-1 or K-2)
27. Balance subject to normal tax
28. Normal tax (4% of item 27)
29. Surtax on item 24. (See Instruction 29)
30. Total (item 28 plus item 29)
31. Total income tax (item 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)
32. Less: Income tax paid or source
33. Income tax paid to a foreign country or U. S. possession. (Attach Form 1116)
34. Balance of income tax (item 31 minus items 32 and 33)
35. Defense tax (10% of item 31). (See Instruction 35)
36. Total income and defense taxes due (item 34 plus item 35)

NOTE.—In order that this return may be accepted as meeting the requirements of the Internal Revenue Code, the data called for herein must be set forth FULLY and CLEARLY.

**A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, COMMISSIONS, BONUSES, AND OTHER COMPENSATION FOR PERSONAL SERVICES.** (See Instruction 1)

Page 2

1. Name and address of employer—If a governmental unit, indicate whether "Federal," "State," or "Local"	2. Amount	3. Expenses (itemize)	4. Amount
	\$		\$
Total of column 2 minus total of column 4 (enter as item 1, page 1)			\$

**Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC.** (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal interest on which is exempt from taxation	5. Interest on amount in excess of exemption
U.S. Savings Bonds of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions.	\$	\$	All	XXXXXX XX
U.S. Savings Bonds issued under Federal Farm Loan Act, or under such Act as amended.			All	XXXXXX XX
U.S. Savings Bonds of United States issued on or before September 1, 1917.			All	XXXXXX XX
U.S. Savings Bonds, Treasury Bills, and Treasury Certificates of Indebtedness.			All	XXXXXX XX
U.S. Savings Bonds and Treasury Bonds.			\$5,000	\$
U.S. Savings Bonds of instrumentalities of the United States (other than those to be reported in (b) above).			None	
Total (enter as item 5, page 1)				\$

**Schedule C.—INCOME FROM RENTS AND ROYALTIES.** (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 8, page 1)
Apartment	\$ 1651.69	\$	\$	\$	\$ 1651.69
Total of deductions claimed in columns 4 and 5					

**Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION.** (See Instruction 9)

1. Nature of business	2. Address if different from name and address on page 1	3. (2) number of places of business	4. (3) business name
Law firm	700 N. Main St. + 9th		
Total of goods sold			
OTHER BUSINESS DEDUCTIONS			
11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)			
12. Interest on business indebtedness			
13. Taxes on business and business property			
14. Losses (explain below)			
15. Bad debts arising from sales or services			
16. Depreciation, obsolescence, and depletion (explain in Schedule E)			
17. Rent, repairs, and other expenses (itemize below or on separate sheet)			
18. Total of lines 11 to 17			
19. Net profit (or loss) (line 1 minus lines 9 and 18) (enter as item 9, page 1)			

Production, manufacture, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on lines 2 and 8 to show that inventories are valued at cost, or cost or market, whichever is lower.

**Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G**

1. Kind of property (state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Trucks	1939	\$ 1010.00	\$ 1000.00	\$ 100.00	\$ 110.00	5	4	\$ 24.00
Truck	3-40	2194.85	"	115.91	1048.94	10	10	213.72
Truck	1936	116.00	0	34.80	81.20	10	5	11.60
								46.32

## Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Schedule H.—EXPLANATION OF DEBITORS CREDITORS					
1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
Pg 1413	Hongwanjia Museum	\$ 51.00	Pg 1413	R.P.T. 75.06 R.P.T. 71.89	\$
				61.T 195.88	
	Huqinhuo Sig School	89.00		Sig Tx 218.84	
				Kumst 1.00	
		80.00			71

## Schedule 1.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction C)

[illegible]

## Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN YEAR						
(1) Personal Exemption			(2) Credit for Dependents			
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year		Credit claimed
				Under 18 years old	Over 18 years old	
Single, or married and not living with husband or wife.			Mrs. M. M. (5')	12		\$ 4
Married and living with husband or wife.	12	\$ 2000	Mrs. M. M. (2')	12		4
Head of family (explain below).			Mrs. M. M.		12	4
			Mrs. M. M.		12	4
			Reason for support if over 18 years old			16

## Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

<p>(I) If your net income is \$3,000 or less, use only this part of schedule</p> <p>Net income (item 20, page 1) \$</p> <p>Earned income credit (10% of net income, above) _____</p>		<p>(S) If your net income is more than \$3,000, use only this part of schedule</p> <p>Earned net income (not more than \$14,000) \$</p> <p>Net income (item 20, page 1) _____</p> <p>Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300) _____</p>	
--	--	---	--

## QUESTIONS

- QUESTIONS
1. State your principal occupation or profession gun mfg
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. Did you file a return for any prior year? yes. If so, what was the latest year? 1922. To which Collector's office was it sent? 11th
4. Are items of income or deductions of both husband and wife included in this return? yes
5. State (a) Name of husband or wife if separate return was made yes - Mr. and Mrs.
- (b) Personal exemption, if any, claimed thereon \_\_\_\_\_
- (c) Collector's office to which it was sent \_\_\_\_\_
6. Check whether this return was prepared on the cash accrual ☒ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a person or company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") no  
If "yes," attach statement required by Instruction J.

**AFFIDAVIT.** (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, a to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to by \_\_\_\_\_  
before me this \_\_\_\_\_ day of \_\_\_\_\_, 194\_\_\_\_\_

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

**AFFIDAVIT.** (See Instruction E)

**AFFIDAVIT.** (See instruction 2)  
(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 194\_\_



(Signature and title of officer administering oath)



ORM 1040  
Treasury Department  
Internal Revenue Service

# UNITED STATES INDIVIDUAL INCOME TAX RETURN

Page 1  
**1941**

(Auditor's Stamp)

837  
Int. Exp  
D-4  
11/1/41  
89-48

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS NOT MORE THAN \$3,000 AND CONSISTS WHOLLY OF SALARIES, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST, RENT, ANNUITIES, OR ROYALTIES.

**For Calendar Year 1941**

or fiscal year beginning \_\_\_\_\_, 1941, and ending \_\_\_\_\_, 1942

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Shoso Nii

(Name) (Use given names of both husband and wife, if this is a joint return)

P. O. Box 1164

(Street and number, or rural route)

Waipahu

Oahu, T. H.

(Post office)

(County)

(State)

(Do not use these spaces)

File

Code

Serial

No.

District

(Cashier's Stamp)

Cash—Check—M. O.

First Payment

## INCOME

Amount	Deductible Expenses (Attach itemized statement)	
Salaries and other compensation for personal services, \$		\$
Dividends. Home-Auto use		\$ 60.00 ✓
Interest on (a) bank deposits, notes, etc., \$	Sumitomo Corporation bonds, \$	1.59 ✓
Interest on Government obligations, etc. Home: Light & Water		60.00 ✓
(b) From line (b), Schedule A, \$	(b) from line (i), Schedule A, \$	
Rents and royalties. (From Schedule B)		1132.09 ✓
Annuities. Discount Received		19.86 ✓
ITEMS 7, 8, AND 9, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE.		
(a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)		
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
Net profit (or loss) from business or profession. (From Schedule H)		383.24 ✓
(State total receipts, from line 1, Schedule H, \$)		
Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule I)		
Total income in items 1 to 9		\$ 1656.78

## DEDUCTIONS

Contributions paid. (Explain in Schedule C)	\$ 40.50 ✓
Interest. (Explain in Schedule C)	
Taxes. (Explain in Schedule C)	12.77 ✓
Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)	
Bad debts. (Explain in Schedule C)	
Other deductions authorized by law. (Explain in Schedule C)	
Total deductions in items 11 to 16	53.27
Net income (item 10 minus item 17)	\$ 1603.51

## COMPUTATION OF TAX

Net income (item 18 above)	\$ 1603.51	26. Normal tax (4% of item 25)	\$
Less: Personal exemption. (From Schedule D-1)	\$ 150.00	27. Surtax on item 22. (See Instruction Z)	\$
Credit for dependents. (From Schedule D-2)	1600.00	28. Total (item 26 plus item 27)	\$
Excess (surplus net income)	\$ 103.51	29. Total tax (item 28 or line 16, Schedule F)	\$
Less: Item 4 (a) above.		30. Less: Income tax paid at source	\$
Earned income credit. (From Schedule E-1 or E-2)		31. Income tax paid to a foreign country or U. S. possession. (Attach Form 1116)	\$
Balance subject to normal tax	\$	32. Balance of tax (item 29 minus items 30 and 31)	\$

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, and that the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to by \_\_\_\_\_ day of \_\_\_\_\_, 1941

(Signature) (See Instruction E)

(Signature and title of officer administering oath)  
I made by an agent must be accompanied by power of attorney. (See Instructions E.)

If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the person preparing the return.

IF THIS RETURN WAS PREPARED FOR YOU BY SOME OTHER PERSON, THE AFFIDAVIT ON PAGE 4 MUST BE EXECUTED



## Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal, interest on which is exempt from taxation	5. Interest on amount in excess of exempt and dividends in respect to surplus
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$	\$	All	XXXXXX
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended			All	XXXXXX
(c) Obligations of United States issued on or before September 1, 1917			All	XXXXXX
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness issued prior to March 1, 1941			All	XXXXXX
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			\$5,000	\$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941			None	
(g) Dividends on share accounts in Federal savings and loan associations	XXXXXXXXXX	XX XXXXXXXX	XXX	
(h) Total (enter as item 4 (a), page 1)				\$
(i) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 4 (b), page 1)			Amount owned at end of year	Interest received or accrued during the year (to be normal tax and)

## Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 5)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 less sum of columns 3, 4, & 5) (enter as item 5, page 1)
Cottages	\$ 1717.31	\$	\$ 14.83	\$ 570.39	1132.29

Explanation of deductions claimed in columns 4 and 5: Water 172.01; Gross Income Tax 30.10; Rent 20.00; Real Property Tax 88.16

## Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
11	Hongwangi Mission	\$ 25.30	13	Terr. Inc. Taxes	\$ 7.00
11	Waipahu Map School	10.00	13	Poll Tax	5.00
11	United Welfare Ass.	3.00			
11	T. B. Association	2.00			

## Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

(I) Personal Exemption			(II) Credit for Dependents		
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year	Credit claimed
				Under 18 years old	18 years or over
Single, or married and not living with husband or wife, and not head of family		\$	Masashi (son 6)	12	\$ 40.00
Married and living with husband or wife	12	1500.00	Kiyoshi (son 4)	12	40.00
Head of family (explain below)			Father	12	40.00
			Mother	12	40.00
			Reason for support if 18 years or over		

## Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 24)

(I) If your net income is \$3,000 or less, use only this part of schedule	(II) If your net income is more than \$3,000, use only this part of schedule
Net income (item 18, page 1)	Earned net income (not more than \$14,000)
Earned income credit (10% of net income, above)	Net income (item 18, page 1)
	Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)

## QUESTIONS

- State your principal occupation or profession Grocery & Gen. Mch.
- Name and address of employer \_\_\_\_\_
- Did you file a return for any prior year? yes If so, what was the latest year? \_\_\_\_\_ To which Collector's office was it sent? Honolulu
- If separate return was made for the current year, state:
  - Name of husband or wife \_\_\_\_\_
  - Personal exemption, if any, claimed thereon \_\_\_\_\_
  - Collector's office to which it was sent \_\_\_\_\_
- Check whether this return was prepared on the ☐ cash or ☒ accrual basis.
- If return on cash basis, do you elect, under section 442, to include as income \_\_\_\_\_
- Did you receive during the taxable year any nontaxable income or interest reported in Schedule A (see Instruction G)? \_\_\_\_\_ If so, attach statement showing source, nature, and amount of such income or interest.
- Did you at any time during your taxable year own directly or any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? \_\_\_\_\_ If so, attach statement required by Instruction J.

Name Shoso Nii  
 Rural Route P. O. Box 1164  
 Business Address Waipahu, Oahu, T. H.

Schedule H. -- PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION.

NO. 13

Personal Property Tax	\$ 85.81 ✓
Gross Income Tax	226.78 ✓
Liquor Tax	208.00 ✓
Territorial Unemployment Compensation	13.26 ✓
Social Security Tax	5.78 ✓
Gross Income License	1.00 ✓
Tobacco License	10.00 ✓
Poison	2.00 ✓
Meat & Pork	10.00 ✓
Federal Liquor License	27.50 ✓
Territorial Liquor License	180.00 ✓
Liquor Permit	<u>1.00 ✓</u>
TOTAL	\$ 771.13

NO. 17

Rent	\$ 254.00
Automobile Expense	226.49
Light & Telephone	173.96
Advertisement	9.00 ✓
Water & Ice	13.40
Office Expense	408.18 ✓
Insurance	116.80 ✓
Repairs	54.00 ✓
Selling Expense	<u>66.78</u>
TOTAL	\$ 1322.81

Schedule H.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(State (1) nature of business .....; (2) number of places of business .....; (3) business address and address if different from name and address on page 1 .....

1. Total receipts.....		\$ 13884.2	
COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
(To be used where inventories are an income-determining factor)		11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself).....	
2. Inventory at beginning of year.....		\$ 811.0	
3. Merchandise bought for sale.....		12. Interest on business indebtedness.....	
4. Labor.....		13. Taxes on business and business property.....	
5. Material and supplies.....		14. Losses (explain below).....	
6. Other costs (itemize below).....		15. Bad debts arising from sales or services.....	
7. Total of lines 2 to 6.....		16. Depreciation, obsolescence, and depletion (explain in Schedule J).....	
8. Less inventory at end of year.....		17. Rent, repairs, and other expenses (itemize below or on separate sheet).....	
9. Net cost of goods sold (line 7 minus line 8).....		18. Total of lines 11 to 17.....	
10. Gross profit (line 1 minus line 9).....		19. Total of lines 9 and 18.....	
		20. Net profit (or loss) (line 1 minus line 19) (enter as item 8, page 1).....	

If the production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on lines 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.  
Explanation of deductions claimed in lines 6, 14, and 17 .....

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION 9 (a)) (FURNISH NAMES AND ADDRESSES)	\$	
INCOME FROM FIDUCIARIES (FURNISH NAMES AND ADDRESSES)	\$	
INCOME FROM OTHER SOURCES (STATE NATURE)	\$	
Total amounts in Schedule I. (Enter as item 9, page 1)	\$	

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Furn. & Fix.	34.41	\$ 2260.90	\$ None	\$ 1356.61	\$ 904.29	10		\$ 222.1
Mach. & Equip.	1936	116.00	"	46.40	69.60	10		11.6
								234.0

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including all accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this ..... day of ..... 194.....



(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature and title of officer administering oath)

(Name of firm or employer, if any)

UNITED STATES

Page 1

## NONRESIDENT ALIEN INCOME TAX RETURN

1942

Auditor's Stamp)

(BUSINESS WITHIN UNITED STATES)

FOR CALENDAR YEAR 1942

(Do not use these spaces)

lv. 837  
aint. Exh  
"D-5"  
imited  
L-29-48or fiscal year beginning January 1, 1942, and ending January 1, 1943

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the sixth month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY

Shoos Hui  
(Name)  
P. O. Box 1164  
(Street and number, or rural route)  
Wagahin G. H. T. H.  
(Post office) (State or Country)

File  
CodeSerial  
No.

District

(Cashier's Stamp)

Cash—Check—M. O.

First Payment

## INCOME

Income derived in full from sources within United States, and expenses, losses, and other deductions properly allocated thereto)

Salaries and other compensation for personal services. (Attach statement)

Dividends. (Attach statement) Wagahin Garage, Inc.

Interest on bank deposits, notes, etc.

Interest on corporation bonds, etc.

Interest on Government obligations, etc.:

(From line (h), Schedule A

(From line (i), Schedule A

Rents and royalties. (From Schedule B)

Annuities Account Earned

Net gain (or loss) from sale or exchange of capital assets. (From Schedule F)

Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)

Profit (or loss) from business or profession. (From Schedule H) For

State total receipts, from line 1, Schedule H, \$

Net gain (or loss) from partnerships; fiduciary income; and other income. (From Schedule I)

Total income in items 1 to 10

## DEDUCTIONS

Contributions paid. (Explain in Schedule C)

Interest. (Explain in Schedule C)

Losses. (Explain in Schedule C)

Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)

Debts. (Explain in Schedule C)

Other deductions authorized by law. (Explain in Schedule C)

Excess part of deductions not allocated to any class of gross income. (Explain in Schedule K)

Total of items 12 to 18

Income derived in full from sources within United States (item 11 minus item 19)

Portion of net income from sources partly within and partly without United States attributable to sources within United States. (Attach statement)

Total net income from sources within United States (item 20 plus item 21)

## COMPUTATION OF TAX

Income (item 22 above)

Personal exemption \$ 12.00Credit for dependents \$ 7.00

Excess (surplus) net income

Item 5 (a) above

Earned income credit

(From Schedule E-1 or E-2)

Income subject to normal tax

30. Normal tax (6% of item 29)

31. Surtax on item 26. (See Instruction 31)

32. Total (item 30 plus item 31)

33. Total tax (item 32 or line 16, Schedule F)

34. Less: Income tax paid at source

35. Balance of tax (item 33 minus item 34)

I declare, under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me/us, and the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Prepared by (other than taxpayer or agent) preparing return)

(Date)

(Taxpayer)

(Date)

(Name of firm or employer, if any)

(Agent)

(Date)

A return made by an agent must be accompanied by power of attorney. (See Instruction E)



## Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

Page 2

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of each obligation held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal interest on which is exempt from taxation	5. Interest on amount in excess of exemption, and dividends subject to surtax only
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions.	\$	\$	All	XXXXXXXXXX
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended.			All	XXXXXXXXXX
(c) Obligations of United States issued on or before September 1, 1917.			All	XXXXXXXXXX
(d) Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941.			All	XXXXXXXXXX
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941.			\$5,000	\$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941.			None	
(g) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942.	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXX	
(h) Total (enter as item 5 (a), page 1).				\$
(i) Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 5 (b), page 1).			Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)

## Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6)

1. Kind of property	2. Amount	3. Depreciation or depletion (explain in Schedule J)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 6, page 1)
patents	\$ 2545 08		\$ 138 14	\$ 797 65	\$ 1658 79

Explanation of deductions claimed in columns 4 and 5. 217.27.44 & P.T. 117.63 with 100.40  
Rent 250.00 Insurance 20.10

## Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, 14, 15, 16, AND 17

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
1210	Red cross	\$ 20 00	1211	Emergency War Relief	\$ 5 00
	Practical Mission	5 00			
	United Negro College	5 00			
	Tuberculosis Assoc	2 00			47 00

## Schedule D.—EXPLANATION OF CREDITS CLAIMED BY RESIDENT OF A CONTIGUOUS COUNTRY IN ITEMS 24 AND 25. (See Instructions 24 and 25)

(1) Personal Exemption			(2) Credit for Dependents		
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year: Under 18 years old    18 years or over	Credit claimed
Single, or married and not living with husband or wife, and not head of family.			Marshall 75 on	10	\$ 250 00
Married and living with husband or wife.	10	10 00	Raymond 5 "	"	25 00
Head of family (explain below)					7 00
			Reason for support if 18 years or over		

## Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 28)

(1) If your net income is \$3,000 or less, use only this part of schedule		(2) If your net income is more than \$3,000, use only this part of schedule	
Net income (item 22, page 1).	\$	Earned net income (not more than \$14,000).	\$
Earned income credit (10% of net income, above).		Net income (item 22, page 1).	
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300).	

## QUESTIONS

- Country of which you are a citizen or subject United States
- State your principal occupation or profession Govt. engineer
- Did you file a return for any prior year? 1941 If so, what was the latest year? 1941 To which Collector's office was it sent? San Francisco
- Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
- Was the rate of your salary or wages increased or decreased after October 3, 1942, and before the end of your taxable year? No (Yes or no)
- Have you excluded from gross income in this return any amount from sources within the United States, other than interest reported in Schedule A? No If so, attach statement setting forth the amount, nature, and source of each such item of income and the reason it has been excluded from gross income.

XXXX





**FORM 1040**  
 Treasury Department  
 Internal Revenue Service

**UNITED STATES**  
**INDIVIDUAL INCOME AND VICTORY TAX RETURN**

194

 Civ. 837  
 Plaintiff, Exh  
 "D-6"  
 admitted  
 11-29-48

 OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS  
 REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN \$1,000,  
 AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL  
 SERVICES, DIVIDENDS, INTEREST OR ANNUITIES

**FOR CALENDAR YEAR 1943**

or fiscal year beginning \_\_\_\_\_, 1943, and ending \_\_\_\_\_, 1944

**PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)**
Shogo Wai

(Name) (Use given names of both husband and wife, if this is a joint return)

P. O. Box 1164

(Street and number, or rural route)

Honolulu 7, Hawaii

(City or town)

(State)

Occupation \_\_\_\_\_

Social Security number, if any \_\_\_\_\_

(Do not use these spaces)

 File  
 Code

 Serial  
 No.

District

(Cashier's Stamp)

**COMPUTATION OF NET INCOME**
**INCOME**

	Employer's Name	City and State	Column 1	Column 2
			Income Tax Net Income	Victory Tax Net Income
1 Salary, Wages, and Compensation for Personal Services  (Members of armed forces see Instruction I)			\$	\$
Total			\$	\$
Less: Deductible expenses. (Attach itemized statement).				
Compensation after deductible expenses.			\$	\$
2. Dividends	<u>Waipahu Grange, Ltd.</u>		<u>804.78</u>	<u>804</u>
3. Interest on corporation bonds, bank deposits, notes, etc.				
4. Interest on Government obligations, etc.: (a) From line A (8), Schedule A (b) From line B (5) and (3), Schedule A				xxxxxxx
5. Annuities				
6. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule B) (b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule B)				xxxxxxx
7. Rents and royalties. (From Schedule C (1))			<u>1508.30</u>	<u>1508</u>
8. Net profit (or loss) from business or profession. (From Schedule C (2)) (State total receipts, from line 1, Schedule C (2) \$ _____)			<u>758.88</u>	<u>758</u>
9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule C (3)).				
10. Total income in items 1 to 9			\$ <u>2571.96</u>	\$ <u>2571</u>
<b>DEDUCTIONS</b>				
11. Contributions. (Explain in Schedule D)			\$ <u>88.00</u>	xxxxxxx
12. Interest. (Explain in Schedule E) (See Instructions 12 and 16 for Victory Tax deduction)				xxxxxxx
13. Taxes. (Explain in Schedule F) (See Instructions 13 and 16 for Victory Tax deduction)				xxxxxxx
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule G)				xxxxxxx
15. Medical, dental, etc., expenses. (Explain in Schedule H)				xxxxxxx
16. Other deductions authorized by law. (Explain in Schedule G)			\$	\$
17. Total deductions in items 11 to 16			\$ <u>88.00</u>	\$ <u>88</u>
18. Income Tax net income (item 10, col. 1, less item 17, col. 1)			\$ <u>2589.96</u>	xxxxxxx
19. Victory Tax net income (item 10, col. 2, less item 17, col. 2)			xxxxxxx	\$ <u>2571</u>

**INCOME AND VICTORY TAX**

20. Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4)		\$ <u>1261</u>
21. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19 (c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded \$20,000, see Schedule L-2)		\$
22. Amount paid with this return (item 20 less item 21)		\$
23. Refund or Credit	If the total of your payments (line 21 (d) on page 4) is larger than your tax (line 20 on page 4), enter the difference. Indicate by a check mark (✓) what you want done with this overpayment: Refund it to me <input type="checkbox"/> ; Apply it on my 1944 estimated tax <input type="checkbox"/> .	\$

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) \_\_\_\_\_

(Date) \_\_\_\_\_

 (Signature of taxpayer) Katharine M. M. M. (Date) \_\_\_\_\_

(Name of firm or employer, if any) \_\_\_\_\_

(If this is a joint return (not made by agent), it must be signed by both husband and wife. A return made by an agent must be accompanied by power of attorney. (See Instructions))

THOSE WHOSE INCOME IS SOLELY FROM SALARIES MAY DISREGARD THIS PAGE Page 2

Schedule A.—INTEREST AND OWNERSHIP OF TAXABLE GOVERNMENT OBLIGATIONS, ETC. (See Instruction 4)

SCHEDULE C(2) - PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

13. Business License 1.00; Auto Stamp Tax 5.00; Tobacco License 10.00; Pork & Meat License 10.00; Personal Property Tax 102.35; Gross Income Tax 572.88; Unemployment Compensation 90.41; Social Security (1%) 35.48; Tobacco Floor Tax 7.61.
17. Rent 420.00; Auto 291.85; Light & Power 237.96; Telephone 39.60; Advertising & Printing 42.00; Ice .90; Office 108.99; Legal and Accounting Fees 451.00; Insurance 56.97; Repairs 129.09; Supplies 223.24; Miscellaneous 48.85.

Less: Amortizable bond premium. (See Instruction 16).....

Balance of interest. (Enter as item 4 (b), column 1, page 1).....

Schedule B.—Schedule B (Form 1040) is a separate sheet and should be used in reporting gains and losses from sales or exchanges of capital assets and property other than capital assets, and filed with and as a part of this return.

Schedule C(1).—INCOME FROM RENTS AND ROYALTIES. (See Instruction 7)

1. Kind of property	2. Amount	3. Depreciation or depletion (explain below)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 less sum of columns 3, 4, and 5) (Enter as item 7, page 1)
Stages	\$ 2504 75		\$ 365 20	\$ 631 25	\$ 1508 30

Schedule C(2).—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

1) nature of business <u>Grocery &amp; General Merchandise</u>	(2) business name <u>S. Mii Store</u>
2) receipts <u>Waipahu, Oahu, T.H.</u>	\$ <u>29422 07</u>
COST OF GOODS SOLD	
OTHER BUSINESS DEDUCTIONS	
1. Salaries and wages not included as "Labor" (do not deduct compensation for yourself).....	\$ <u>3296 40</u>
2. Interest on business indebtedness.....	<u>832 63</u>
3. Taxes on business and business property.....	
4. Losses (explain below).....	
5. Bad debts arising from sales or services.....	<u>122 90</u>
6. Depreciation, obsolescence, and depletion (explain below).....	<u>2050 25</u>
7. Rent, repairs, and other expenses (explain below).....	
8. Amortization of emergency facilities (attach statement).....	
9. Total of lines 11 to 18.....	\$ <u>8502 18</u>
10. Total of lines 9 and 19.....	\$ <u>38683 19</u>
11. Net profit (or loss) (line 1 less line 20). (Enter as item 8, page 1).....	\$ <u>758 88</u>

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN COLUMN 3 AND LINE 16, ABOVE

1. Kind of property (describe, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
1. Furniture & Fix.	54-44	1994 36	\$ none	\$ 1856 56	\$ 437 78	10		\$ 111 30
2. Machinery & Equip.	1936	118 00	none	62 80	46 40	10		11 60
								122 90

EXPLANATION OF DEDUCTIONS CLAIMED IN COLUMNS 4 AND 5, AND LINES 6, 14, AND 17, ABOVE

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
1. C	Rent	\$ 335 40	8ch. C(1)	Gross Income Tax	\$ 95 08
2. Water		200 82			631 25

Schedule C(3).—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES. (See Instruction 9)

Name and address of partnership, syndicate, etc.....	Amount,	\$.....
Name and address of fiduciary.....	Amount,	\$.....
Other income (state nature).....	Amount,	\$.....
Total (enter as item 9, page 1).....		\$.....



1. Name and Address of Organization	2. Amount	1. To Whom Paid	2. Amount
American Red Cross	\$ 5 00		\$
Police Hospital	5 00		
Community Chest	20 00		
Tuberculosis Association	2 00		
Total (Enter as item 11, page 1, subject to 15% limitation).	\$ 22 00	Total (Enter as item 12, page 1)	\$

**Schedule F.—TAXES.** (See Instruction 13)

## Schedule G.—LOSSES AND OTHER DEDUCTIONS. (See instructions 14.)

1. Nature	2. Amount	1. Item No.	2. Explanation	3. Amount
	\$			\$
Total. (Enter as item 13, page 1).	\$			

## Schedule H.—MEDICAL, DENTAL, ETC., EXPENSES. (See Instruction 15)

[illegible]

**Schedule I.—PERSONAL EXEMPTION AND CREDIT FOR DEPENDENTS.** (See Tax Computation Instructions)

(1) Personal Exemption			(2) Credit for Dependents			
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year		Credit claimed (Head of a household not claimed or dependent was born on bond)
				Under 18 years old	18 years or over	
Single, or married and not living with husband or wife, and not head of family.						
Married and living with husband or wife.	12	1200 00	Masashi - son	12		\$ 3 00
Head of a family (explain below)			Kiyoshi - son	12		\$ 3 00
			Reason for support if 18 years or over			

**Schedule J.—COMPUTATION OF EARNED INCOME CREDIT. (See Tax Computation Instructions)**

<p>(1) If your net income is \$3,000 or LESS, use only this part of schedule</p>		<p>(2) If your net income is MORE than \$3,000, use only this part of schedule</p>	
Net income (item 18, page 1) .....	\$ 2559 96	Earned net income (not more than \$14,000) .....	\$ .....
Earned income credit (10% of net income, above) .....	256 00	Net income (item 18, page 1) .....	\$ .....
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300) .....	\$ .....

## QUESTIONS

1. Did you file a return for any prior year? Yes If so, what was the latest year? 1943 To which Collector's office was it sent? Honolulu, Hawaii
2. If you claimed credit for tax paid in line 21 (c), page 4, to which Collector's office was your declaration sent? Honolulu, Hawaii
3. If separate return was made for the current year, state:
- (a) Name of husband or wife \_\_\_\_\_
- (b) Personal exemption, if any, claimed thereon \_\_\_\_\_
- (c) Collector's office to which it was sent \_\_\_\_\_
4. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
5. Was the rate of your salary or wages increased or decreased during taxable year? (Yes or No) No
6. Did you receive during your taxable year any amount claimed to be tax-exempt (see General Instruction I)? No If so, attach statement showing source, nature, and amount of such income.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation, or a personal holding company as defined by section 501 of the Internal Revenue Code? No so, attach statement required by General Instruction I.

## COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

Page 4

Net income (item 18, page 1)		\$ 2539.96
Personal exemption. (From Schedule I-1)		
Credit for dependents. (From Schedule I-2)	\$ 1300.00	
Surplus net income.	700.00	1900.00
Certain interest on Government obligations (item 4 (a), page 1)		689.96
Earned income credit. (From Schedule J-1 or J-2)	\$ none	
Income subject to normal tax	854.00	354.00
Normal tax (6% of line 7)		21.24
Amount on line 4. (See Surplus Table, page 3 of Instructions)		23.16
Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 16, Schedule B)		23.16
Income Tax paid to a foreign country or U. S. possession. (Attach Form 1116)		106.35
INCOME TAX		none
VICTORY TAX (line 6 of Victory Tax Schedule, below)		108.35
Lines 12 and 13		54.54
Tax paid at source on tax-free covenant bond interest. (See Footnote 1)		160.89
Less line 15		none
Tax for 1942. (See Statement, Form 1125, from Collector) (First, see page 4 of Instructions)		160.89
Line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions)		none
EVENNESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is \$50 or less):		160.89
Line 16 or 17, whichever is SMALLER		
Line 50 or three-fourths of (a), immediately above, whichever is LARGER. This is	\$ none	
THE FORGIVEN part of the tax		none
Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2)		none
INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))		none
Income and Victory Tax withheld by employer		160.89
Income Tax paid on 1942 income	\$ none	
Tax paid on 1943 income on account of Declaration of Estimated Tax	none	
(d) Total payments	41.28	
BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (d), enter the difference here and also as item 20, page 1; if not, see item 23, page 1)		41.28
If you claim a credit in line 18, disregard lines 19 (a) and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 19 (c). Attach completed schedule.		
If your surplus net income for 1942 or 1943 exceeded \$20,000, requiring you to complete Schedule L-2, enter here the amount shown on line 18 of 27 of such schedule, \$		119.61

## Schedule K.—VICTORY TAX. (See Tax Computation Instructions)

Net income (item 19, page 1)		\$ 2871.96
Specific exemption (\$624 if return reports income of only one person; otherwise, see Instructions, page 3)		624.00
Subject to Victory Tax (line 1 less line 2)		1947.96
Tax before credit (5% of line 3)		97.40
Tax credit:		
Person, or married person not living with husband or wife: 25% (plus 2% for each dependent)		
Line 4, but not more than \$500 (plus \$100 for each dependent)		
Person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent)		
Line 4, but not more than \$500 (plus \$100 for each dependent)		
Person living with husband or wife if only one return or a joint return is filed, or head of a family:		
(plus 2% for each dependent) of line 4, but not more than \$1,000 (plus \$100 for each dependent).		
Schedule I-2, for exclusion of one dependent by head of a family)		
Victory Tax (line 4 less line 5). (Enter in line 13, above)	44%	43.88
Victory Tax		54.54

Schedule L.—To be used only by individuals whose surplus net income for 1942 or 1943 exceeded \$20,000. Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable

Income for 1942 (item 23, Form 1040 (1942))	\$	
Income for 1943 (line 4, above)	\$	
Income for base year, \$	plus \$20,000: \$	
1940.....		
1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of return.		(Check year used: 1937..... 1938.....)

Return is filed for either 1942 or 1943 and separate returns for the other of such years, enter the aggregate of the separate surplus net income for the separate return year. The surplus net income to be entered in line 3 shall be determined in the same manner as the surplus net income in line 1 or 2, whichever is the lesser.



File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (Item 8, below) must be paid in full with return. See separate instructions for filling out return.

Page

FORM 1040  
Treasury Department  
Internal Revenue Service

# U. S. INDIVIDUAL INCOME TAX RETURN

## FOR CALENDAR YEAR 1944

194

Civ. 837  
Plaint. Exh.  
"D-7"  
admitted  
11-29-48

or fiscal year beginning \_\_\_\_\_, 1944, and ending \_\_\_\_\_, 1945

Do not write in these spaces

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), as your return, if your total income was less than \$5,000, consisting wholly or largely shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

NAME Shores Hui  
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS P. O. Box 1164  
(PLEASE PRINT. Street and number or rural route)

24 Honolulu 7 Hawaii  
(City or town, postal zone number) (State)

Social Security  
No. (if any)

File

Code

Serial

No.

District

(Cashier's Stamp)

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of wife (or husband). List names of other close relatives with 1944 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your  
Exemptions

NAME (Please print)	Relationship	NAME (Please print)	Relationship
Your name <u>Shores Hui</u>	XXXXXXXX		
<u>Wife</u>			
<u>Daughter</u>			
<u>Brother</u>			

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see instruction 2.

Your  
Income

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT
		\$

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) 204

4. If you received any other income, give details on page 3 and enter the total here 4790

5. Add amounts in items 2, 3, and 4, and enter the total here 5101

If item 5 includes income of both husband and wife, show husband's income here, \$ \_\_\_\_\_; wife's income here, \$ \_\_\_\_\_

How to  
Figure  
Your Tax

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 4. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

6. Enter your tax from table on page 2, or from line 15, page 4. 655

7. How much have you paid on your 1944 income tax?

(A) By withholding from your wages (Attach Withholding Receipts, Form W-2). 391.28

(B) By payments on 1944 Declaration of Estimated Tax 391

Enter total here → 655

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here 265

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here 265

Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1945 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1943

To which Collector's office was it sent? Honolulu

To which Collector's office did you pay amount claimed in item 7 (B), above? Honolulu

Is your wife (or husband) making a separate return for 1944? No

If "Yes," write below:

Name of wife (or husband) \_\_\_\_\_

Collector's office to which sent \_\_\_\_\_

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return)

(Date)

(Signature of taxpayer)

(Date)

(Name of firm or employer, if any)

(SEE TAX TABLE BELOW)

(If this is a joint return of husband and wife, it must be signed by both)

10-4100

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Page 3

### Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Annuity (total amount you paid in) \$	4. Total amount received this year \$
2. Amount received tax-free in prior years	5. Excess, if any, of line 4 over line 3
3. Amount of your cost (line 1 less line 2) \$	6. Enter line 5, or 3 percent of line 1, whichever is greater \$

### Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)
Rentals	\$ 4505.00		\$ 145.80	\$ 498.29
Profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$ 4505.00		\$ 145.80	\$ 498.29

### Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

1. Nature of business <i>General &amp; Retail</i>		2. Business name <i>Lee &amp; Sons</i>	
Receipts <i>47988.53</i>			
<b>OF GOODS SOLD</b>			
3. Inventory at beginning of year \$ <i>4546.34</i>			
4. Merchandise bought for sale \$ <i>4516.86</i>			
5. Freight and supplies			
6. Other costs (explain in Schedule G)			
7. Total of lines 3 to 6 \$ <i>47712.22</i>			
8. Inventory at end of year \$ <i>4762.42</i>			
9. Cost of goods sold (line 7 less line 8) \$ <i>41049.78</i>			
10. Profit (line 1 less line 9) \$ <i>5891.75</i>			
<b>OTHER BUSINESS DEDUCTIONS</b>			
11. Salaries and wages not included as "Labor" \$ <i>3036.52</i>			
12. Interest on business indebtedness			
13. Taxes on business and business property \$ <i>977.10</i>			
14. Losses (explain in Schedule G)			
15. Bad debts arising from sales or services			
16. Depreciation, obsolescence and depletion (explain in Schedule F) \$ <i>14.75</i>			
17. Rent, repairs, and other expenses (explain in Schedule G) \$ <i>1707.85</i>			
18. Amortization of emergency facilities (attach statement)			
19. Net operating loss deduction (attach statement)			
20. Total of lines 11 to 19 \$ <i>5956.17</i>			
21. Total of lines 9 and 20 \$ <i>47753.35</i>			
22. Net profit (or loss) (line 1 less line 21) \$ <i>2035.40</i>			

Business Lic 100 Auto Lic 36.70 Telephone Lic 10.00 Rent & Heat Lic 10.00  
 Prop. Property 118.24 Garage Lic 184.30 Ten Year Long Term 85.16 Land Leasing 170.31  
 Rent 880.00 Auto Exp 477.83 Light & Power 98.83 Telephone 47.20  
 Lic. & Print 700 Office Exp 49.75 Legal & Accounting Fees 480.00 Supplies 170.00  
 Bus. Insurance 670.50 Repairs 58.80 Miscellaneous 55.65

Total income from above sources (Enter as item 4, page 1)

\$ 47963.5

### Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Fixtures	14-25	2013.10	100.00	1667.86	351.24	10	11	11
Eng & Eng	1916	11.6		81.00	34.80	10	11	11

### Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
Rent	316.00			
in it.	51.76			
Garage Lic TN	120.52			
Others	10.00			
	498.29			

Do not itemize deductions if—(1) You determine your tax from the tax table on page 2, or  
(2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.  
If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

## DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

		Amount
<b>Contributions</b>		\$
	Allowable Contributions (not in excess of 15 percent of item 5, page 1)	\$
<b>Interest</b>		\$
	Total Interest	
<b>Taxes</b>		\$
	Total Taxes	
<b>Losses from fire, storm, shipwreck, or other casualty, or theft</b>		\$
	Total Allowable Losses (not compensated by insurance or otherwise)	
<b>Medical and dental expenses</b>		\$
	Net Expenses (not compensated by insurance or otherwise)	\$
	Enter 5 percent of item 5, page 1, and subtract from Net Expenses	
	Allowable Medical and Dental Expenses. See Instruction for limitation	
<b>Miscellaneous (including alimony, amortizable bond premium, special deduction for the blind, etc.)</b>		\$
	Total Miscellaneous Deductions	
<b>TOTAL DEDUCTIONS</b>		\$

## TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 2

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income.	\$	5101
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500).	\$	500
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income.	\$	4601
4. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1).	\$	200
5. Subtract line 4 from line 3. Enter the difference here. This is your Surtax Net Income.	\$	4401
6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5. Enter the amount here.	\$	578
7. Copy the figure you entered on line 3, above. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions).	\$	4601
8. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions).	\$	500
9. Subtract line 8 from line 7, and enter the difference here.	\$	4101
10. Enter here 3 percent of line 9. This is your Normal Tax.	\$	123
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D).	\$	655
If you used the \$500 standard deduction in line 2, disregard lines 12, 13, & 14, and copy on line 15 the same figure you entered on line 11		
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116).	\$	
13. Enter here any income tax paid at source on tax-free covenant bond interest.	\$	
14. Add the figures on lines 12 and 13 and enter the total here.	\$	
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax.	\$	655



File this return with Collection of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate instructions for filling out return.

Page 1

RM 1040  
Department  
Revenue Service

# U. S. INDIVIDUAL INCOME TAX RETURN

## FOR CALENDAR YEAR 1945

1945

or fiscal year beginning \_\_\_\_\_, 1945, and ending \_\_\_\_\_, 1945

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2, as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these spaces

File Code

Serial No.

District (Cashier's Stamp)

NAME Shores & Kujala Mrs  
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS P. O. Box 1164  
(PLEASE PRINT. Street and number or rural route)

Honolulu #7, Hawaii, T. 70.  
(City or town, postal zone number) (County) (State)

Occupation \_\_\_\_\_ Social Security No. \_\_\_\_\_

List your own name.

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (or defined in instruction 1) with 1945 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

1.	Name (please print)	Relationship	Name (please print)	Relationship
Your name	<u>Shores Mrs</u>			
	<u>Kujala</u>	<u>Wife</u>		
	<u>Marshall</u>	<u>Son</u>		
	<u>Kujala</u>			

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues,

insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see instruction 2.

2.	Print Employer's Name	Where Employed (City and State)	Amount
			\$

Enter total here → \$

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) \_\_\_\_\_

4. If you received any other income, give details on page 2 and enter the total here \_\_\_\_\_

5. Add amounts in items 2, 3, and 4, and enter the total here \_\_\_\_\_

If item 5 includes incomes of both husband and wife, show husband's income here, \$ \_\_\_\_\_; wife's income here, \$ \_\_\_\_\_

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

6. Enter your tax from table on page 4, or from line 15, page 3 \_\_\_\_\_

7. How much have you paid on your 1945 income tax?

(A) By withholding from your wages \_\_\_\_\_

(B) By payments on 1945 Declaration of Estimated Tax \_\_\_\_\_

Enter total here → \$

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here \_\_\_\_\_

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here \_\_\_\_\_

Check (✓) whether you want this overpayment: Refunded to you ☐ or Credited on your 1946 estimated tax ☐

d a return for a prior year, what was the latest year? 1944

Collector's office was it sent? No

Collector's office did you pay claimed in item 7 (B), above?

Is your wife (or husband) making a separate return for 1945? No

If "Yes," write below: ("Yes" or "No")

Name of wife (or husband) \_\_\_\_\_

Collector's office to which sent \_\_\_\_\_

are under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of ledge and belief is a true, correct, and complete return.

use of person (other than taxpayer or agent) preparing return) \_\_\_\_\_

(Date)

(Signature of taxpayer)

(Date)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

10-48707-1

**#16** Gross Income Tax 25.69 Ten. Money 28.87 Social Security 17.02 22.74  
 Business Lic. 1.00 Auto Lic. 40.00 Tithe Lic. 10.00 Park + Hunt Lic. 1.00  
 Personal Prop. 145.15

**#17** Rent 420.00 Auto Expenses 207.46 Light + Power 161.45 Telephone 40.00  
 Adv. + Print 10.00 Office Expenses 45.00 Legal + Accounting Fee 420.00  
 Insurance 40.27 Depreciation 142.54 Rental Prop. Exp. 640.27 Garage Exp. 20.33 Supplies

	(1957)	(Report to schedule 1)	(Schedule 1)	(Schedule 1)
collage	\$ 328.79	\$ None	\$ None	\$ None
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$ 338.07	\$ None	\$ None	\$ None

**Schedule C—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION.** (Farmers should obtain Form 1560F)

State (1) nature of business Business + general; (2) business name Miss Stone

**1. Total receipts**

**COST OF GOODS SOLD**

(To be used where inventories are an income-determining factor)  
 (Enter the letters "C," "M," or "I" on lines 2 and 3 if inventories are valued at either cost, or cost or market, whichever is lower)

2. Inventory at beginning of year	\$ 5766.42
3. Merchandise bought for sale	\$ 4477.82
4. Labor	
5. Material and supplies	
6. Other costs	
(explain in Schedule G)	
7. Total of lines 2 to 6	\$ 5074.55
8. Less inventory at end of year	\$ 7420.72
9. Net cost of goods sold (line 7 less line 8)	\$ 4334.53
10. Gross profit (line 1 less line 9)	\$ 9282.66

**OTHER BUSINESS DEDUCTIONS**

11. Salaries and wages not in line 4	\$ 3398.98
12. Interest on business indebtedness	
13. Taxes on business and business property	\$ 983.82
14. Losses (explain in Schedule G)	
15. Bad debts arising from sales or services	
16. Depreciation, obsolescence and depletion (explain in Schedule F)	\$ 347.50
17. Rent, repairs, and other expenses (explain in Schedule G)	\$ 2490.58
18. Amortization of emergency facilities (attach statement)	
19. Net operating loss deduction (attach statement)	
20. Total of lines 11 to 19	\$ 6907.74
21. Total of lines 9 and 20	\$ 5022.27
22. Net profit (or loss) (line 1 less line 21)	\$ 2275.90

**Schedule D—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.**

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)  
 2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)

**Schedule E—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES**

Name and address of partnership, syndicate, etc.	Amount,	\$
Name and address of estate or trust	Amount,	\$
Other sources (state nature)	Amount,	\$
Total		

**Total income from above sources (Enter as item 4, page 1)**

3 575.67

**Schedule F—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C**

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated to zero at end of year	5. Depreciation allowed (or allowable) (if prior years)	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowed this year
Insurance + Exp.	24-44	\$ 2045.65	\$ None	\$ 1691.01	\$ 354.64	10		\$ 22.1
Banking + Exp.	1936	116		92.80	23.20	10		11.6
								33.7

**Schedule G—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C**

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
		\$			\$



Do not itemize deductions if—(1) you determine your tax from the tax table on page 4, or  
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.  
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

## DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.	Amount
<b>Contributions</b>	\$
Allowable Contributions (not in excess of 15 percent of item 5, page 1)	\$
<b>Interest</b>	\$
Total Interest	\$
<b>Taxes</b>	\$
Total Taxes	\$
Losses from fire, storm, shipwreck, or other casualty, or theft	\$
Total Allowable Losses (not compensated by insurance or otherwise)	\$
<b>Medical and dental expenses</b>	\$
Net Expenses (not compensated by insurance or otherwise)	\$
Enter 5 percent of item 5, page 1, and subtract from Net Expenses	\$
Allowable Medical and Dental Expenses. See instruction for limitation	\$
<b>Miscellaneous (see instructions)</b>	\$
Total Miscellaneous Deductions	\$
<b>TOTAL DEDUCTIONS</b>	\$

## TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	\$ 6,267.71	
Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)	500	
Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$ 5,767.71	
Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions)	500	
Subtract line 4 from line 3. Enter the difference here. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	\$ 5,267.71	
Enter here 3 percent of line 5. This is your Normal Tax. (Figure your Surtax below and enter in line 10)	\$ 158.03	
Copy the figure you entered on line 3, above	\$ 5,767.71	
Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)	200	
Subtract line 8 from line 7. Enter the difference here. This is your Surtax Net Income	\$ 5,567.71	
Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 9. Enter the amount here	744.90	
Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)	\$ 896.93	
Use the \$500 standard deduction in line 2, disregard lines 12, 13, and 14, and copy on line 15 the same figure you entered on line 11		
Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$	
Enter here any income tax paid at source on tax-free covenant bond interest		
Add the figures on lines 12 and 13 and enter the total here		
Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax	\$ 896.93	

File this return with Collector of Internal Revenue on or before March 15, 1947. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040  
Treasury Department  
Internal Revenue Service

# U. S. INDIVIDUAL INCOME TAX RETURN

## FOR CALENDAR YEAR 1946

194

or fiscal year beginning \_\_\_\_\_, 1946, and ending \_\_\_\_\_, 1947

Civ. 837  
Plaint. Exh  
"D-9"  
admitted 11-29-48

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than \$100 of other wages, dividends, and interest.

Name Shore + Syre Inc  
(PLEASE PRINT. If this return is for a husband and wife, use both first names)  
ADDRESS P. O. Box 1164  
(PLEASE PRINT. Street and number or rural route)  
71m 7. 74win, T. 74.  
(City or town, postal zone number) (County) (State)  
Occupation \_\_\_\_\_ Social Security No. \_\_\_\_\_

Do not write in these spaces  
File Code \_\_\_\_\_  
Serial No. \_\_\_\_\_  
District \_\_\_\_\_  
(Cashier's Stamp)

Your  
exemptions

1.	Name (please print)	Relationship	Name (please print)	Relationship
Your name	<u>Shore Inc</u>	<u>xxxxxxx</u>		
	<u>Syre</u>	<u>Wife</u>		
	<u>Shore</u>	<u>Son</u>		
	<u>Syre</u>			

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1946, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues,

insurance, bonds, etc. Members of armed forces and persons claiming tax or reimbursed expenses, see Instruction 2.

Your  
Income

2.	First Employer's Name	Where Employed (City and State)	Amount
			\$ _____
			\$ _____
			\$ _____

3. Enter here the total amount of your dividends. Enter total here → \$ 3110  
 4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation). 52  
 5. If you received any other income, give details on page 2 and enter the total here. 40642  
 6. Add amounts in items 2, 3, 4, and 5, and enter the total here. \$ 46812

How to  
Figure  
Your Tax

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, community taxes, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 2.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, itemize deductions, the other must also itemize deductions.

Tax Due  
or  
Refund

7. Enter your tax from table on page 4, or from line 12, page 3. \$ 419  
 8. How much have you paid on your 1946 income tax?  
 (A) By withholding from your wages. \$ \_\_\_\_\_  
 (B) By payments on 1946 Declaration of Estimated Tax. \$ 720  
 Enter total here → 720  
 9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here. \$ \_\_\_\_\_  
 10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here. \$ 406  
 Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1947 estimated tax ☒

If you filed a return for a prior year, what was the latest year? 1945  
 which Collector's office was it sent? 71m. T. 74.  
 which Collector's office did you pay amount claimed in item 8 (B), above? \_\_\_\_\_

Is your wife (or husband) making a separate return for 1946?  
 If "Yes," write below:  
 Name of wife (or husband) Joint Return  
 Collector's office to which sent \_\_\_\_\_

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) \_\_\_\_\_ (Date) \_\_\_\_\_ (Signature of taxpayer) \_\_\_\_\_ (i)

(Name of firm or employer, if any) \_\_\_\_\_ (If this is a joint return of husband and wife, it must be signed by both) \_\_\_\_\_

#13 Gross Income 2,00 Auto Income 35.00  
 Tobacco Income 14.00 Profit & Loss Income 10.00 Personal  
 Property Tax 176.07 Gross Income Tax 857.08 Rev. 4.00  
 Compensation, Fr. Social Security (7%) 18.04 Dividend Tax 6.00

#17 Rent 770.00 Auto Expenses 545.20 Light & Power 200.81  
 Telephone 51.40 Adm & Maint. 14.00 Water 6.60 Office Expenses 49.80  
 Legal & Accounting Fees 496.00 Insurance 80.27 Repairs 109.00  
 Supplies 29.76 Miscellaneous Expenses 73.10

### Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (explain in Schedule G)
Lotteries	\$ 954.20		\$ 784.40	\$ 142.77
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$ 954.20		\$ 784.40	\$ 142.77

733 03

### Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

(1) nature of business Farming & Gen. Store (2) business name A. H. H. Store

Total receipts Waipahu, Oahu, T. 76. \$ 57664.44

#### COST OF GOODS SOLD

be used where inventories are an income-determining factor) of the letters "C" or "M" lines 2 and 8 if inventories are listed at either cost, or cost or market, whichever is lower)

Inventory at beginning of year \$ 7440.72

Merchandise bought for sale \$ 50178.22

Inventory at end of year \$ 47479.61

Cost of goods sold (line 7 less line 8) \$ 10184.83

Net profit (line 1 less line 9) \$ 2568.74

#### OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not in line 4 \$ 3034.10

12. Interest on business indebtedness

13. Taxes on business and business property 1120.71

14. Losses (explain in Schedule G)

15. Bad debts arising from sales or services

16. Depreciation, obsolescence and depletion (explain in Schedule F) 423.4

17. Rent, repairs, and other expenses (explain in Schedule G) 2608.74

18. Amortization of emergency facilities (attach statement)

19. Net operating loss deduction (attach statement)

20. Total of lines 11 to 19 \$ 7616.09

21. Total of lines 9 and 20 \$ 55095.70

22. Net profit (or loss) (line 1 less line 21)

### Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

Gain (or loss) from sale or exchange of capital assets (from separate Schedule D)

Gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)

### Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc. Amount, \$

Name and address of estate or trust Amount, \$

Other sources (state nature) Miscellaneous Income Amount, \$ 962.70

Total \$ 962.70

Total income from above sources (Enter as item 5, page 1) \$ 4264.47

### Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (make, date, serial or other identification)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated to zero at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
1. Frig. & Freezer	3-4-46	\$ 2166.64	\$ 1200.00	\$ 1714.16	\$ 452.48	10-15		\$ 37.27
2. Frig. & Freezer	1-4-46	\$ 89.50			\$ 89.50	10-15		\$ 4.97
								\$ 42.24

### Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Explanation	2. Amount	3. Column or Line No.	4. Explanation	5. Amount
1. Frig. & Freezer	\$ 444.44			
2. Frig. & Freezer	\$ 95.00			
	\$ 142.77			





Do not use this page if your income is wholly from salaries, wages, dividends, and interest

## Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	\$		4. Total amount received this year	\$	
2. Amount received tax-free in prior years	\$		5. Excess, if any, of line 4 over line 3	\$	
3. Remainder of your cost (line 1 less line 2)	\$		6. Enter line 5, or 3 percent of line 1, whichever is greater. (Attach separate schedule for each separate annuity in question.)	\$	

**Schedule B.—INCOME FROM RENTS AND ROYALTIES**

1. Kind of property	2. Amount of cost or recovery	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (Explain in Schedule G)
<i>integers</i>	\$ <i>171 00</i>	\$	\$ <i>10 00</i>	\$ <i>110 62</i>
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5).	\$ <i>871 00</i>	\$	\$ <i>10 00</i>	\$ <i>110 62</i>

**Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION.** (Farmers should obtain Form 1040F)

(1) nature of business proving & serv. station (2) business name D. M. Stone  
 (3) business address P.O. Box 608 T. 91

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts					\$ 57496	42
<b>COST OF GOODS SOLD</b>						
(To be used where inventories are an income-determining factor) (Enter the letters "C" or "G" or "M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)						
2. Inventory at beginning of year	\$	10115	10			
3. Merchandise bought for sale		4767	73			
4. Labor						
5. Material and supplies						
6. Other costs						
(explain in Schedule G)						
7. Total of lines 2 to 6	\$	57724	83			
8. Less inventory at end of year		10508	86			
9. Net cost of goods sold (line 7 less line 8)	\$	47216	47			
10. Gross profit (line 1 less line 9)	\$	10279	45			
<b>OTHER BUSINESS DEDUCTIONS</b>						
11. Salaries and wages not in line 4	\$	4772	55			
12. Interest on business indebtedness						
13. Taxes on business and business property		1285	77			
14. Losses (explain in Schedule G)						
15. Bad debts arising from sales or services						
16. Depreciation, obsolescence and depletion (explain in Schedule F)		3872				
17. Rent, repairs, and other expenses (explain in Schedule G)		2388	77			
18. Amortization of emergency facilities (attach statement)						
19. Net operating loss deduction (attach statement)						
20. Total of lines 11 to 19	\$	8558	25			
21. Total of lines 9 and 20	\$	55774	47			
22. Net profit (or loss) (line 1 less line 21)						

9. #13

Auto License 25.00 Tobacco Lic. 1.00 Prof. & V. Lic. 10.00 for 1900 License 18.00  
Lawrence Property 20.84 gross Income Tax 967.14 Social Security (17%) 441.14  
Car Fund. Tax 6.25 = 1485.97

17 Rent 420.00 Auto Expense 610.21 Light & Power 229.00 Telephone 58.80  
Auto Lic. 13.00 Office Expense 44.70 Food & Accounting fees 290.00  
Bus. Insurance 54.61 Repairs 145.67 Supplies 205.32 Miscellaneous Exp. 54.35

	38-7	\$ 0.28	\$ 1.00	\$ 1.75	\$ 5.61	10-15	\$ 32	12
	1st	8/10	-	4/7	8/15	15	5	17
								38 75

## Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

2. Explanation		1. Amount	1. Column or Line No.	2. Explanation	1. Amount
2.45	Taxes	\$ 47.50			
	Electricity	63.12			
		110.62			









PLAINTIFF'S EXHIBIT "E-1"

REGISTRATION CERTIFICATE

This is to certify that in accordance with the Selective Service Proclamation of the President of the United States, Shoso Nii, Waipahu, Honolulu, T. H., has been duly registered this 26th day of October, 1940.

/s/ KATSUMI FUJIWARA,

Registrar for 9th Precinct, 5th, Honolulu, T. H.

Be Alert:

Keep in touch with your Local Board.

Notify Local Board immediately of change of address.

Carry This Card With You At All Times.

/s/ SHOSO NII,

Registrant.

Description of Registrant

Race: Oriental. Height (Approx.): 5 ft., 7 in.  
Weight: 170. Eyes: Brown. Hair: Black. Complexion: Light.

Other obvious physical characteristics that will aid in identification: Scar on left thumb nail; vaccination mark on left arm.

## PLAINTIFF'S EXHIBIT "E-2"

[Stamp of Local Board]: Local Board No. 9, Waipahu Fire Station, Waipahu, Oahu, T. H.

June 21, 1941

## PERMIT OF LOCAL BOARD FOR REGISTRANT TO DEPART FROM THE UNITED STATES

This is to certify that Shoso Nii, Order No. 2634, Serial No. 2198, Class 3, Division A, a registrant of this Local Board has applied for a permit to depart from the United States, and this Local Board, being convinced that said registrant is not likely to be called for military service during the proposed absence and that the granting of such permit will not result in the evasion of or interference with the execution of the Selective Service Law, hereby authorizes the said registrant to depart from the United States and to remain absent therefrom for 5 Months—Leaving June 26, 1941—Nitta Maru.

In his application the registrant gave this information:

1. Countries to be visited: Japan.
2. Individuals or organizations represented: Self. Mailing address: P.O. Box 416, Waipahu, Oahu.
3. Nature of business: Received urgent telegram from family stating father is very ill. Returning to close up father's affairs.

Description of registrant:

Race: Oriental. Height (Approx.): 5 ft., 7 in.



Plaintiff's Exhibit "E-2"—(Continued)

Weight (Approx.): 170 lbs. Eyes: Brown. Hair: Black. Complexion: Light.

Other obvious physical characteristics that will aid in identification: Scar on left thumb nail. Vaccination mark on left arm.

Date of birth: January 3, 1914.

/s/ E. M. HANSEN,  
Member of Local Board.

\* \* \* \*

Citizen.



## PLAINTIFF'S EXHIBIT "P"

Know All Men By These Presents: That I, Kane-ichi Nii, of Waipahu, City and County of Honolulu, Territory of Hawaii, being of sound and disposing mind and meory and not acting under duress, menace, fraud, or under influence of any person, but being mindful of the uncertainties of human life, do make, ordain, publish and declare this my Last Will And Testament, in the manner following:

First: I hereby revoke, cancel and annul any and all other and former wills, codicils, and testamentary dispositions by me at anytime heretofore made;

Second: I direct the payment of all of my just debts and funeral expenses;

Third: All the rest, residue, and remainder of estate, real, personal and mixed, wheresoever situate, of which I may die, seized or possessed, or which I may be entitled at the time of my decease, I give, devise and bequeath to my beloved son "Shoso Nii", of Waipahu, aforesaid;

To Have And To Hold the same unto the said Shoso Nii for his own use and behoof, absolutely forever.

Fourth: I nominate, constitute and appoint my said son "Shoso Nii", the executor of this my Last Will and Testament, without bond.

In Witness Whereof, I have hereunto subscribed my name in said Waipahu, district of Ewa, Island of Oahu, T. H., this 17th day of December, A.D. 1932,

Plaintiff's Exhibit "P"—(Continued)  
in the presence of Tomejiro Tsumoto and E. Ikinaga  
whom I have requested to become attesting witness  
hereto.

/s/ KANEICHI NII,  
Testator.

The foregoing instrument, all written on two pages  
only, was subscribed, published and declared by  
Kaneichi Nii as and for his Last Will and Testament,  
in our presence and in the presence of each of us,  
and we, at the time, at his request, in his presence and  
in the presence of each other, hereunto subscribe our  
names and residences as attesting witness this 17th  
day of December, A.D. 1932.

/s/ TOMEJIRO TSUMOTO,  
Address: Waipahu, Oahu, T. H.

/s/ E. IKINAGA,  
Address: Waipahu, Oahu, T. H.

---

UNITED STATES EXHIBIT No. 1

CERTIFICATE OF TITLE

Honolulu, Oahu—ss.

We hereby certify that we have carefully examined  
the Indexes in the offices of the Clerks of the Supreme  
Court, Circuit Court of the First Judicial Circuit,  
Tax Assessor and Registrar of Conveyances, as to  
the title of Kaneichi Nii in and to:

First: All of that certain parcel of land (portion  
of the land described in Royal Patent Number 5694,  
Land Commission Award Number 6545, Apana 1 to

## United States Exhibit No. 1—(Continued)

H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, being Lot "A", and thus bounded and described:

Beginning at the Southeast corner of this piece of land on the west bank of the Kapakahi Stream, being also the Northwest end of present wooden bridge, the true azimuth and distance of the said point to a pipe driven at the Northwest corner of Lot 10, Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true South:

1.  $105^{\circ} 50'$  170.00 feet along the North side of right of way;
2.  $15^{\circ} 50'$  14.80 feet along the West end of right of way;
3.  $105^{\circ} 50'$  105.80 feet along the remaining portion of R.P. 5694 L.C.Aw. 6545 Apana 1 to H. Haalilio, to a pipe;
4.  $199^{\circ} 50'$  140.10 feet along the same, to a pipe;
5.  $294^{\circ} 16'$  218.60 feet along the South bank of the Kapakahi Stream;
6.  $311^{\circ} 48'$  25.54 feet long the West bank of the Kapakahi Stream;
7.  $348^{\circ} 10'$  61.30 feet along the West bank of the Kapakahi Stream;
8.  $19^{\circ} 14'$  27.50 feet along the West bank of the Kapakahi Stream, to the point of beginning.

Containing an Area of 29,200 Square Feet, or 0.670 Acre, or thereabouts.

Together with the additional right to use the right



United States Exhibit No. 1.—(Continued)  
of way in common with the owners and occupants of this lot and the remaining portion of R.P. 5694 L.C.Aw. 6545 Apana 1 to H. Haalilio for a road purpose which right of way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of Kapakahi Stream, the true azimuth and distance to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06' 28.75$  feet, and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06' 17.46$  feet along the West bank of the Kapakahi Stream;
2.  $105^{\circ} 50' 181.04$  feet along the remaining portion of R.P. 5694 L.C.Aw. 6545 Apana 1 to H. Haalilio;
3.  $195^{\circ} 50' 14.80$  feet along Lot "A";
4.  $285^{\circ} 50' 170.00$  feet, to the point of beginning and containing an area of 2,598 square feet.

Said above described premises having been conveyed to the said Kaneichi Nii by T. Ota (k), by Deed dated December 27th, A.D. 1932 and recorded in the Office of the Registrar of Conveyances at Honolulu in Liber 1189 on Pages 91-93 on December 27th, A.D. 1932 at 2:22 o'clock p.m.

Second: All of that certain parcel of land (portion of the land described in Royal Patent Number 5694, Land Commission Award Number 6545, Apana 1 to H. Haalilio and a portion of Boundary Certificate No. 20 to John Hamauku) situate, lying and being at Ohua, Waikele, in the District of Ewa, City and County of Honolulu, Territory of Hawaii, and thus bounded and described:

Beginning at the Northeast corner of this piece of land the true azimuth and distance of the said

## United States Exhibit No. 1—(Continued)

point of beginning from a pipe driven at the Northwest corner of Lot 10, Land Court Appl. 779, by traverses, being: (a)  $159^{\circ} 06'$  28.75 feet and (b)  $105^{\circ} 50'$  30.0 feet, and running by azimuths measured clockwise from true South:

1.  $15^{\circ} 50'$  14.8 feet;
2.  $105^{\circ} 50'$  140.0 feet;
3.  $195^{\circ} 50'$  14.8 feet;
4.  $285^{\circ} 50'$  140.00 feet to the point of beginning.

Containing an Area of 2,072 Square Feet, or thereabouts.

Together with fifty per cent (50%) of additional undivided interest of right of way to use in common with the Owners and occupants of the above mentioned lot and the remaining portion of L.C.Aw. 6545 Apana 1 to H. Haalilio for a road purpose only, which Right of Way is described as follows:

Beginning at the Northeast corner of this piece of land on the West bank of the Kapakahi Stream, the true azimuth and distance of the said point of beginning to a pipe driven at the Northwest corner of Lot 10 of Land Court Application 779 being  $339^{\circ} 06'$  28.75 feet and running by azimuths measured clockwise from true South:

1.  $339^{\circ} 06'$  17.46 feet along the West bank of the Kapakahi Stream;
2.  $105^{\circ} 50'$  41.04 feet;
3.  $195^{\circ} 50'$  14.80 feet;
4.  $285^{\circ} 50'$  30.00 feet to the point of beginning and containing an area of 526 square feet.

Said above described premises having been con-

United States Exhibit No. 1—(Continued)  
veyed to the said Kaneichi Nii by T. Ota (k), by Deed dated July 23rd, A.D. 1938 and recorded in said Registry Office in Liber 1451, Pages 418-420 on July 23rd, A.D. 1938 at 9:35 o'clock a.m.

(Note: Attention is called to the fact that the parcels of land hereinabove described as "Second" with respective areas of 2072 Square Feet and 526 Square Feet lie wholly within and comprise the entire easement area described in "First" with an Area of 2598 Square Feet.)

And We further certify that there are no liens or encumbrances of whatsoever kind or nature against said title, save and except the following, to-wit:

#### Taxes

The Abstractors have been informed at the Office of the Tax Assessor that all taxes assessed against the land under search (assessed with other land) have been fully paid, save and except the second installment for the year 1944 amounting to the sum of \$26.54, which is now due and payable and unless sooner paid will be delinquent after November 20th, A.D. 1944.

Key: Zone, 9; Section, 4; Plat, 14; Parcel, 9.

Assessed Valuations: Area Assessed, 0.718 acre; Real Property, \$432.00; Improvements, \$1,585.00; Total, \$2,017.00.

And We further certify that the legal title to said parcel of land is vested in the said Kaneichi Nii as shown by said Indexes.

United States Exhibit No. 1—(Continued)

Power of Attorney

Kaneichi Nii (k) to Shoso Nii.

Dated February 7th, 1939. Vol. 1503, page 190.

General Powers

(Recorded: February 27th, 1939 at 10:17 a.m.)

Power of Attorney

Saku Nii (w) to Shoso Nii.

Dated February 7th, 1939. Vol. 1503, page 194.

General Powers

(Recorded February 27th, 1939 at 10:18 a.m.)

In Witness Whereof, We have hereunto set our hand this the Second day of August, A.D., Nineteen Hundred and Forty-Four (1944) at 2:00 o'clock p.m.

MAKINNEY & COMPANY,

By /s/ KENNETH MAKINNEY,

Licensed Abstractors.





FIRST DIVISION

12212

OAHU

TERRITORY OF HAWAII REAL PROPERTY TAX BILL  
MAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;  
It becomes your RECEIPT when stamped by the Cash Register  
MAKE CHECK PAYABLE TO TAX COLLECTOR

1948  
1935

P. O. BOX 259, HONOLULU 9

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL				TERRITORY OF HAWAII FIRST DIVISION	
Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE	AREA & DESCRIPTION	KEY
	31.10	31.09	62.19 *	0.67 AC LT-A WAIKELE	9-4-9-06
				Owner KENEICHI NII	
				Address F Y OMUREI P O BOX 1164 HONOLULU, T H	

Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

FIRST DIVISION

OAHU

1936

TERRITORY OF HAWAII REAL PROPERTY TAX BILL  
MAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;  
It becomes your RECEIPT when stamped by the Cash Register  
MAKE CHECK PAYABLE TO TAX COLLECTOR

1948

P. O. BOX 259, HONOLULU 9

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL				TERRITORY OF HAWAII FIRST DIVISION	
Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE	AREA & DESCRIPTION	KEY
	40.74	40.74	81.48	0.67 Ac Lot A Waikale	9-4-11-06
				Owner Keneichi Nii	
				Address F.Y. Omurei P O Box 1164 Honolulu, T.H.	

Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

FIRST DIVISION

OAHU

1948

TERRITORY OF HAWAII REAL PROPERTY TAX BILL  
MAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;  
It becomes your RECEIPT when stamped by the Cash Register  
MAKE CHECK PAYABLE TO TAX COLLECTOR

1937

P. O. BOX 259, HONOLULU 9

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL				TERRITORY OF HAWAII FIRST DIVISION	
Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE	AREA & DESCRIPTION	KEY
	38 98	38 98	77 96	U 67 ACR, LT A WAIKELE	9-4-11-6
				Owner KENEICHI NII	
				Address F Y OMUREI P O BOX 1164 HONOLULU T H	

Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

PAID  
JUNE 22 1937

FIRST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

DEMAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT.

It becomes your RECEIPT when stamped by the Cash Register  
MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

**DUPLICATE**

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
	34 43	34 43	68 86*

TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.67 AC LOT A WAIKELE	9-4-11
KENETCHI NII	
F Y OMUREI P O BOX 1164 HONOLULU T H	

T. H. Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

FIRST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

DEMAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT.

It becomes your RECEIPT when stamped by the Cash Register  
MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

**DUPLICATE**

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
	36 42	36 42	72 84 *

TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 AC LT A WAIKELE	9-4-11
KANEICHI NII	
F Y OMUREI P O BOX 1164 HONOLULU, HAWAII	

T. H. Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

FIRST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

DEMAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT.

It becomes your RECEIPT when stamped by the Cash Register  
MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

**DUPLICATE**

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
	\$ 32.39	\$ 32.39	\$ 64.78

TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 Ac. Lt A Waialeale	9-4-11
Keneichi Nii	
F. Y. Omurei P.O. Box 1164 Honolulu, T. H.	

T. H. Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

ST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

AND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;  
 It becomes your RECEIPT when stamped by the Cash Register  
 MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

1948

1941

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
29.32	29.32	58.64

TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 AC LT-A WAIKELE	9-4-11-06
Other KANEICHI NII	
Address F. Y. OMUREI P O BOX 1164 HONOLULU, T H	

No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

T DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

AND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;  
 It becomes your RECEIPT when stamped by the Cash Register  
 MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

1948

1942

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
28.81	28.82	57.63

TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 AC LT A WAIKELE	9-4-14-09
Other KANEICHI NII	
Address F Y OMUREI P O BOX 1164 HONOLULU T H	

No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

AND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;  
 It becomes your RECEIPT when stamped by the Cash Register  
 MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

1943

1948

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
29.57	29.57	59.14

TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 Ac Lot A Waialele	9-4-14-09
Other Kaneleichi Mii	
Address F.Y. Omurei P O Box 1164 Honolulu, T.H.	

No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

PAID Collector 1st Division

June 25-28 2006/23 4-1 Current Nov. 8-13 2007/23 1-1 Current

FIRST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

DEMAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;

It becomes your RECEIPT when stamped by the Cash Register

MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

1948  
1944

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL				TERRITORY OF HAWAII FIRST DIVISION	
Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE	AREA & DESCRIPTION	KEY
	26 55	26 54	53 09	0.718 AC LOT A WAIKELE	9-4-14-09
				Owner KANEICHI NII	
				Address F. Y. OMUREI P O BOX 1164 HONOLULU T H	

T. H. Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

FIRST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

DEMAND IS HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;

It becomes your RECEIPT when stamped by the Cash Register

MAKE CHECK PAYABLE TO TAX COLLECTOR

P. O. BOX 259, HONOLULU 9

1948  
1945

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL				TERRITORY OF HAWAII FIRST DIVISION	
Item	1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE	AREA & DESCRIPTION	KEY
	26.32	26.32	52.64	0.718 Ac. Lt. A Waialele	9-4-14-09
				Owner Kaneichi Nii	
				Address F. Y. Omurei P.O. Box 1164 Honolulu, 7 Hawaii	

T. H. Form No. B-6-RP Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.



ST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;

It becomes your RECEIPT when stamped by the Cash Register

MAKE CHECK PAYABLE TO TAX COLLECTOR

P.O. BOX 259, HONOLULU 9

1946

1946

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
25.49	25.50	50.99

## TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 Ac. Lt. A Waikele	9-4-14-09
Owner Kaneichi Nii	
Address F. Y. Omurei P.O. Box 1164 Honolulu, 7 Hawaii	

Approved by the Governor of Hawaii, September 1st, 1938

Read Carefully the Instructions on the Back of this Bill.

ST DIVISION

OAHU

## TERRITORY OF HAWAII REAL PROPERTY TAX BILL

HEREBY MADE FOR ALL TAXES NOW DUE. PRESENT THIS BILL WITH YOUR PAYMENT;

It becomes your RECEIPT when stamped by the Cash Register

MAKE CHECK PAYABLE TO TAX COLLECTOR

P.O. BOX 259, HONOLULU 9

1947

THIS BILL IS FOR THE FULL VALUE OF THE PARCEL

1st Installment Delinquent June 20	2nd Installment Delinquent Nov. 20	TOTAL AMOUNT DUE
35.33	35.34	70.67

## TERRITORY OF HAWAII FIRST DIVISION

AREA & DESCRIPTION	KEY
0.718 Ac. Lt. A Waikele	9-4-14-09
Owner Kaneichi Nii	
Address F. Y. Omurei P. O. Box 1164 Honolulu, 7 Hawaii	

Approved by the Governor of Hawaii, September 1st, 1938

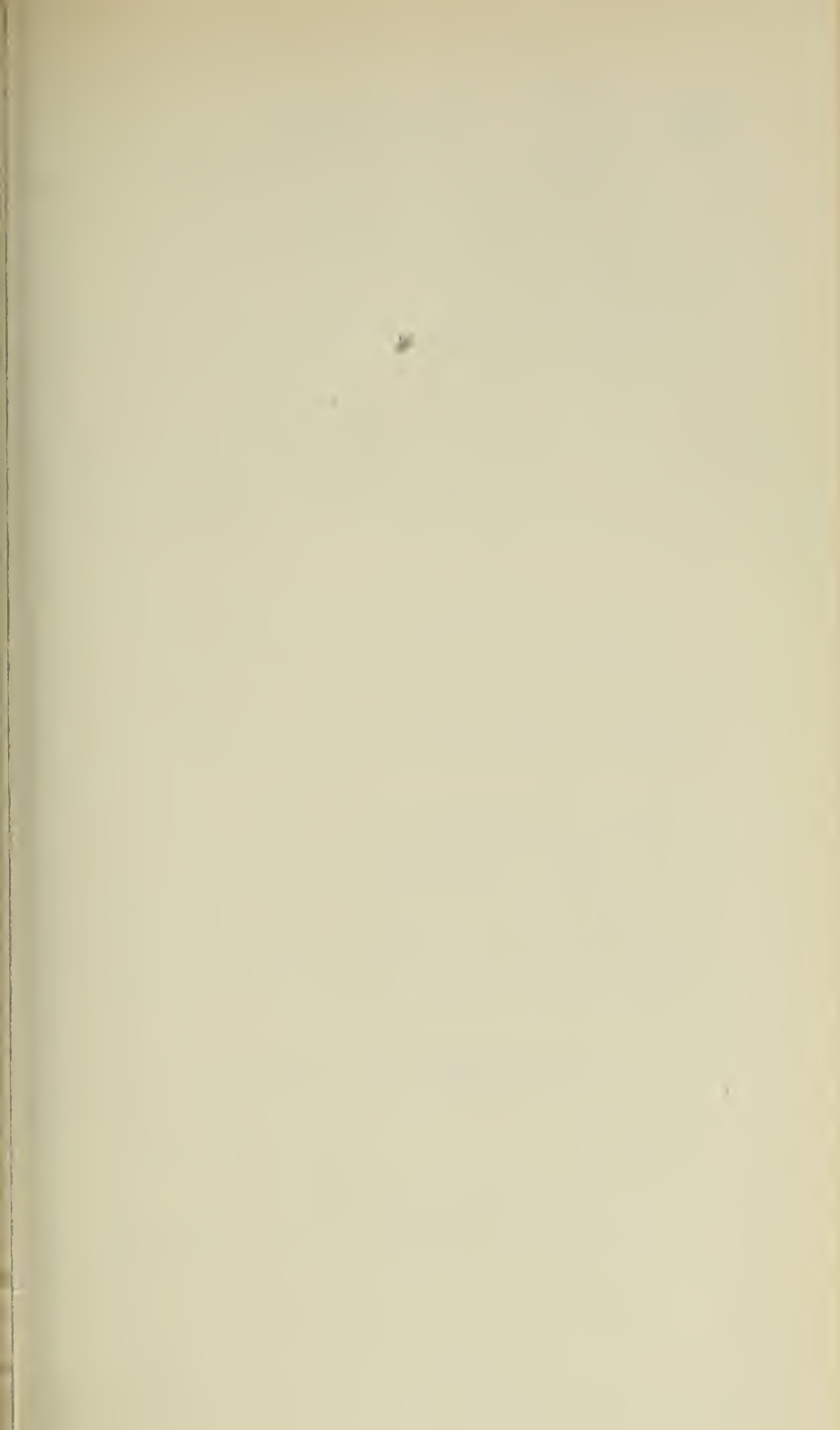
Read Carefully the Instructions on the Back of this Bill.

Jun-12-1946 466905 1-A-Current 50.99

Nov-18-1947 616013 1-A-Current 35.34









UNITED STATES EXHIBIT 3-A

S. Nii Store, Waipahu, Oahu, T. H.

October 27, 1947

[Stamp]: Alien Property Custodian, Honolulu,  
Oct. 30, 1947. Received.

Alien Property Custodian  
Yokohama Specie Bank Building  
Honolulu, Hawaii

Dear Sir:

This will notify your office that the proceeds of rental income from the property of Kaneichi Nii, covering the period July, 1941, to September, 1947, have been used to purchase merchandise and defray expenses for S. Nii Store.

Two months' extension is requested in order to obtain the necessary funds payable to Alien Property Custodian's Office for the account of Kaneichi Nii. If extension and permission are not granted, I will be forced to hold a special sale to raise the necessary funds.

Your kind attention and consideration will be greatly appreciated.

Yours very truly,

/s/ KATSUTOSHI MIKAMI,

Attorney-in-fact for Shoso Nii dba S. Nii Store.

HM/rs

## UNITED STATES EXHIBIT 3-B

[Shiro Kashiwa Letterhead]

December 3, 1947

[Stamp]: Alien Property Custodian, Honolulu,  
Dec. 4, 1947. Received.

Mr. James G. Hammond, Acting Manager  
Office of Alien Property  
Yokohama Specie Bank Building  
Honolulu, T. H.

Dear Sir:

I hereby beg to notify you that Mr. Katsutoshi Mikami is no longer the attorney-in-fact of Shoso Nii. Mr. Shoso Nii returned from Japan on November 8, 1947, and he is taking over his own business.

Hereafter will you kindly deal with me as attorney for Shoso Nii in the matter of Vesting Order No. 9777. I shall see you within a few days with relation to the matter of turning over the alleged debt to the Office of the Alien Property.

Yours very sincerely,

/s/ SHIRO KASHIWA.

SK:fo



UNITED STATES EXHIBIT 3-C

[Stamp]: Alien Property Custodian, Honolulu,  
Feb. 12, 1948. Received.

P. O. Box 416, Waipahu, Oahu, T. H.  
February 11, 1948

Office of Alien Property  
Department of Justice  
Yokohama Specie Bank Building  
Honolulu, T. H.

Re: Real property and a claim owned by Ka-  
neichi Nii, a.k.a. Kenichi Nii, V.O. No. 9777

Gentlemen:

Reference is made to your letter to me dated February 6, 1948, requiring a statement showing in detail all rentals collected by or for Shoso Nii, together with expenses of upkeep and taxes, from January 2, 1933.

Shoso Nii returned from Japan on November, 1947, and I have transferred all of his affairs and all of his books and records in connection therewith to him as of January 1, 1948. Consequently, I wish to request that you obtain the mentioned information from Shoso Nii whose address is P. O. Box 416, Waipahu, Oahu, T.H.

Yours very truly,

/s/ KATSUTOSHI MIKAMI.

## UNITED STATES EXHIBIT 3-D

Honolulu, Hawaii

March 31, 1948

[Stamp]: Alien Property Custodian, Honolulu,  
March 31, 1948. Received.

Office of Alien Property  
Yokohama Specie Bank Building  
Honolulu, Hawaii

Re: Real Property and claim owned by Kanei-  
chi Nii, a.k.a Kenichi Nii V. O. No. 9777

Gentlemen:

In reference to your letter dated March 12, 1948, I wish to state that I cannot supply the necessary information requested by you as I have neither knowledge of all rentals collected nor disbursements made by Kaneichi Nii during the period of January 2, 1933, to June 30, 1941.

I had taken over the interests of Shoso Nii dba S. Nii Store in July, 1941, only after the latter's departure to Japan. The information which you request occurred prior to my managership. However, I believe, Shoso Nii, son of Kaneichi Nii, will be able to furnish you with the necessary information as he was in complete charge of his father's affairs prior to his departure to Japan.

I have, however, furnished your office with all rentals collected and disbursements made during the period July, 1941, to September 30, 1947, during which time I have complete knowledge of same.

## United States Exhibit 3-D—(Continued)

Attached you will find the copies of reports which I have made for your office.

Your due consideration to this matter will be greatly appreciated.

Yours very truly,

/s/ KATSUTOSHI MIKAMI.

Enc-2. KM/RS

## KANEICHI NII

Waipahu, Oahu, T. H.

Rental Income from July 1, 1941, to September, 1947

## Year, 1941

July—I. Konno 32.50; Mrs. Shim 20.00.....	\$ 52.50	
August—I. Konno 32.50; Mrs. Shim 20.00; M. Iizuka 18.00 .....	70.50	
September—I. Konno 32.50; Mrs. Shim 20.00.....	52.50	
October—I. Konno 32.50; Mrs. Shim 20.00; M. Iizuka 18.00 .....	70.50	
November—I. Konno 32.50; Mrs. Shim 20.00; M. Iizuka 36.00 .....	88.50	
December—I. Konno 32.50; Mrs. Shim 20.00; M. Iizuka 18.00 .....	70.50	405.00

## Year, 1942

January—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim 20.00 .....	\$ 70.50	
February—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim 20.00 .....	70.50	
March—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim 20.00 .....	70.50	
April—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim 20.00 .....	70.50	
May—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim 20.00 .....	70.50	
June—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim 20.00 .....	70.50	

## United States Exhibit 3-D—(Continued)

Year, 1942—(Continued)

July—I. Konno 32.50; M. Iizuka 18.00; Mrs. Shim		
20.00 .....	70.50	
August—I. Konno 32.50; M. Iizuka 18.00; Mrs.		
Shim 20.00 .....	70.50	
September—I. Konno 32.50; M. Iizuka 18.00; Mrs.		
Shim 20.00 .....	70.50	
October—I. Konno 32.50; M. Iizuka 18.00; Mrs.		
Shim 20.00 .....	70.50	
November—I. Konno 32.50; M. Iizuka 18.00; Mrs.		
Shim 20.00 .....	70.50	
December—I. Konno 32.50; M. Iizuka 18.00; Mrs.		
Shim 20.00 .....	70.50	846.00

Year, 1943

January—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	\$ 75.00	
February—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
March—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
April—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
May—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim		
20.00 .....	75.00	
June—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim		
20.00 .....	75.00	
July—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim		
20.00 .....	75.00	
August—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
September—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
October—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
November—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	
December—I. Konno 35.00; M. Iizuka 20.00; Mrs.		
Shim 20.00 .....	75.00	900.00

## United States Exhibit 3-D—(Continued)

## Year, 1944

January—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	\$ 75.00	
February—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
March—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
April—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
May—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
June—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
July—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
August—I. Konno 35.00; M. Iizuka 20.00; Mrs. Shim 20.00 .....	75.00	
September—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
October—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
November—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
December—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	900.00

## Year, 1945

January—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	\$ 75.00	
February—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
March—I. Konno 35.00; M. Iizuka 20.00; B. Ena- yoda 20.00 .....	75.00	
April—I. Konno 35.00; M. Iizuka 20.00; B. Ena- yoda 20.00 .....	75.00	
May—I. Konno 35.00; M. Iizuka 20.00; B. Ena- yoda 20.00 .....	75.00	
June—I. Konno 35.00; M. Iizuka 20.00; B. Ena- yoda 20.00 .....	75.00	



## United States Exhibit 3-D—(Continued)

Year 1945—(Continued)

July—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
August—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
September—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
October—I. Konno 35.00; M. Iizuka 20.00; B. Enayoda 20.00 .....	75.00	
November—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
December—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	900.00

Year, 1946

January—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	\$ 75.00	
February—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
March—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
April—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
May—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
June—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
July—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
August—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
September—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
October—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
November—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	
December—I. Konno 35.00; Kaneshiro 20.00; B. Enayoda 20.00 .....	75.00	900.00

## United States Exhibit 3-D—(Continued)

Year, 1947

January—G. Kaneshiro 20.00; B. Enayoda 20.00; I. Konno 35.00 .....	\$ 75.00	
February—G. Kaneshiro 20.00; B. Enayoda 20.00; I. Konno 35.00 .....	75.00	
March—G. Kaneshiro 20.00; Pedro Taberas 20.00;	40.00	
April—G. Kaneshiro 20.00; I. Konno 70.00; Pe- dro Taberas 20.00 .....	110.00	
May—G. Kaneshiro 20.00; I. Konno 35.00; Pedro Taberas 20.00 .....	75.00	
June—G. Kaneshiro 20.00; I. Konno 35.00; Pedro Taberas 20.00 .....	75.00	
July—G. Kaneshiro 20.00; I. Konno 35.00; Pedro Taberas 20.00 .....	75.00	
August—G. Kaneshiro 20.00; I. Konno 35.00 Pe- dro Taberas 20.00 .....	75.00	
September—G. Kaneshiro 20.00; I. Konno 35.00; Pedro Taberas 20.00 .....	75.00	675.00

## KANEICHI NII

Waipahu, Oahu, T. H.

Rental Expenses from July, 1941, to December, 1946

Year, 1941

July—Water .....	\$ 5.00	
August—Water .....	5.00	
September—Water .....	5.00	
October—Water .....	5.00	
November—Water .....	5.00	
December—Water .....	5.00	30.00

Year, 1942

January—Water Bill — Mrs. Shim .....	\$ 2.50	
February—Water and Repair pipe .....	9.30	
March—Water and roofing cement .....	6.75	
April—Water, elec. wire, repair roof .....	42.95	
May—Water .....	2.50	
June—Water .....	2.50	
July—Water, tax, repair screen .....	28.50	

## United States Exhibit 3-D—(Continued)

## Year, 1942—(Continued)

August—Water and repairs .....	3.95	
September—Water .....	2.50	
October—Water .....	2.50	
November—Water .....	2.50	
December—Water and repairs .....	38.44	144.89

## Year, 1943

January—New water meter and repair water pipe..\$	31.00	
February .....	None	
March—Pipe work .....	26.75	
April .....	None	
May—Roof paper and roof repairs.....	51.30	
June—Repair roof and carpenter labor.....	15.00	
July—Repair kitchen and clean yard.....	28.65	
August—Cesspool work .....	135.60	
September—Cesspool plumbing work .....	75.10	
October—Repair toilet .....	5.00	
November—Washing house; repair water pipe.....	3.00	
December .....	None	371.40

## Year, 1944

January—Bought one flat iron, repair kitchen.....\$	2.95	
February—Repair toilet, pipe and cement work....	34.45	
March—Bought one sickle for yard.....	1.00	
April—Repaired water pipe .....	3.05	
May—Repaired water pipe .....	7.00	
June—Repaired screen wire .....	8.50	
July—Repaired fence .....	15.00	
August—Cleaned yard, labor .....	10.00	
September—Repaired toilet, pipe and cement work	42.35	
October .....	None	
November .....	None	
December .....	None	124.30

## Year, 1945

January .....	\$ None	
February .....	None	
March—Repaired electric wire .....	30.95	

## United States Exhibit 3-D—(Continued)

Year, 1945—(Continued)

April .....	None	
May .....	None	
June .....	None	
July—Repaired toilet .....	14.98	
August .....	None	
September .....	None	
October .....	None	
November .....	None	
December .....	None	45.93

Year, 1946

January .....	\$ None	
February—Repaired sewer pipe .....	12.50	
March .....	None	
April—Cut tree, labor .....	20.00	
May—Cement work, repaired steps .....	35.00	
June—Repaired sewer pipe .....	25.90	
July .....	None	
August .....	None	
September .....	None	
October .....	None	
November .....	None	
December .....	None	93.40

## TAXES PAID FOR KANEICHI NII

Year, 1941

Gross Income Tax .....	\$ 6.08	
Real Property Tax .....	58.64	64.72

Year, 1942

Gross Income Tax .....	\$ 12.69	
Real Property Tax .....	57.63	70.32

Year, 1943

Gross Income Tax .....	\$ 13.50	
Real Property Tax .....	59.14	
Federal Income Tax (1/3 of \$41.28) .....	13.76	86.40

## United States Exhibit 3-D—(Continued)

## Year, 1944

Gross Income Tax .....	\$ 13.50	
Real Property Tax .....	53.09	
Federal Income Tax (1/3 of \$414.32).....	138.11	
Territory Income Tax (1/3 of \$1.97).....	.66	205.36
		<hr/>

## Year, 1945

Gross Income Tax .....	\$ 13.50	
Real Property Tax .....	52.64	
Federal Income Tax (1/3 of \$1020.58).....	340.19	
Territory Income Tax (1/3 of \$45.14).....	15.05	421.38
		<hr/>

## Year, 1946

Gross Income Tax .....	\$ 13.50	
Real Property Tax .....	51.25	
Federal Income Tax (1/3 of \$911.93).....	303.98	
Territory Income Tax (1/3 of \$57.34).....	19.11	387.84
		<hr/>

## Year, 1947

Gross Income Tax .....	\$ 12.38	
Real Property Tax .....	35.33	
Federal Income Tax (1/3 of \$760.50).....	253.50	
Territory Income Tax (1/3 of \$29.52).....	9.84	311.05
		<hr/>



UNITED STATES EXHIBIT 3-E

[Shiro Kashiwa Letterhead]

March 25, 1948

[Stamp]: Alien Property Custodian, Honolulu,  
Mar. 26, 1948. Received.

Mr. James G. Hammond, Office of Alien Property,  
Bethel & Merchant Streets, Honolulu, T. H.

Re Nii Rental

Dear Sir:

Receipt of your letter dated March 22, 1948, is  
hereby acknowledged.

We have statements for rental collected and ex-  
penses paid from July, 1941, but since your demand  
goes back to 1933 it will take some time before I can  
furnish you the information required.

Yours very truly,

/s/ SHIRO KASHIWA.

---

[Endorsed]: No. 12212. United States Court of  
Appeals for the Ninth Circuit. Shoso Nii, Appellant,  
vs. Tom C. Clark, Attorney General as Successor to  
the Alien Property Custodian, Appellee. Transcript  
of Record. Appeal from the United States District  
Court for the Territory of Hawaii.

Filed March 28, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
For the Ninth Circuit

No. 12212

SHOSO NII,

Plaintiff-Appellant,

vs.

TOM C. CLARK, Attorney General as Successor to  
the Alien Property Custodian,

Defendant-Appellee.

### STATEMENT OF POINTS

Comes now Shoso Nii, Plaintiff-Appellant in the above-entitled cause, and states that he intends to rely on the following points in his appeal to this Court:

1. The Court erred in holding that the Plaintiff-Appellant failed to prove his interest in the vested properties by a preponderance of credible evidence in that Plaintiff-Appellant proved his interest in the properties by credible undisputed evidence far in excess of the requirement of preponderance of evidence.

2. The Court erred in holding that even if Plaintiff-Appellant established his claim of equitable title in and to the properties in dispute, the Plaintiff-Appellant would still not be able to recover because the Attorney General as Successor to the Alien Property Custodian was entitled to rely upon the record title in the same manner and to the same extent as a bona fide purchaser would have been in that:

(a) The manner and form by which the said Attorney General as Successor to the Alien Property

Custodian obtained his title to properties did not make him a bona fide purchaser or a person of equivalent status thereto.

(b) That the undisputed evidence showed that actual possession by tenants of Shoso Nii, Plaintiff-Appellant, was notice enough to the Alien Property Custodian to prevent him from having the status of a bona fide purchaser.

3. The Court erred in holding that the Attorney General of the United States as Successor to the Alien Property Custodian was entitled to judgment on the counterclaim and ordering the Plaintiff-Appellant to account under said counterclaim to the said Attorney General all of the net income from the real property vested under Vesting Order No. 9777 for the period May 1, 1935, to and including October 1, 1947, in that by proof far in excess of the requirement of preponderance of credible evidence, Plaintiff-Appellant proved that the real property in question out of which the rentals arose was given to the Plaintiff-Appellant, Shoso Nii, on or about May, 1935, by his father, Kaneichi Nii, and between May 1, 1935, to and including October 1, 1947, the property out of which the rentals were collected was that of Shoso Nii, the Plaintiff-Appellant, solely.

4. The Court erred in entering the order under Section 17 U.S.C.A. Title 50 directing the Plaintiff-Appellant, Shoso Nii, to pay to the Attorney General of the United States as Successor to the Alien Property Custodian the sum of \$3,169.01 pursuant to the Turnover Directive in that at the time said order was issued the Court had no jurisdiction to issue such a summary order, when the Court refused to grant

the motion under Section 17 U.S.C.A. Title 50 and went ahead with the hearing of the case on its merits it lost its jurisdiction to order any payments under the said motion under said Section 17 U.S.C.A. Title 50.

5. The Court erred in entering the order under Section 17 U.S.C.A. Title 50 directing the Plaintiff-Appellant, Shoso Nii, to account for and pay over to the Attorney General the net income from the vested property for the period from May 1, 1935, to and including July 1, 1941, in that the Court at the time said order was issued had no jurisdiction to enter such a summary order the Court having once refused the motion under said Section 17 U.S.C.A. Title 50 and having gone ahead with the hearing on the merits of the case and further under Section 17 U.S.C.A. Title 50 the order, if any, must be for a sum certain and a debt in "prae senti".

6. That the Court erred in deciding the case against the Plaintiff-Appellant and in favor of the defendant in spite of the overwhelming testimony adduced by the Plaintiff-Appellant in his favor by the Court's meticulous and undue emphasis on the evidence by deposition of Kaneichi Nii wherein deponent stated, "I made a power of attorney to Shoso Nii in Kobe about December, 1935, to dispose of my properties in Hawaii" (emphasis ours) when such reference to "my properties" was entirely proper in that as far as the bare legal title was concerned it still was Kaneichi Nii's, the deponent; that the said statement was the only evidence against the entire evidence for the Plaintiff-Appellant in the

entire case and Plaintiff-Appellant clearly proved his case by a preponderance of evidence.

7. That the Court erred in holding upon the evidence adduced that Plaintiff-Appellant did not acquire title to the parcels in dispute by way of adverse possession.

8. That the Court erred in refusing to make the following findings of fact:

(a) That from the time Kaneichi Nii left for Japan in 1935 up to the effective date of the Vesting Order, Shoso Nii collected as his own all rentals from the property in dispute; that Shoso Nii paid to the Territory of Hawaii in Shoso Nii's name gross income taxes on the gross rental derived from the premises; that Shoso Nii paid to the Territory of Hawaii in Shoso Nii's name net income taxes due to the Territory of Hawaii for the rental collected; that Shoso Nii paid to the United States of America through the Bureau of Internal Revenue net income taxes in the name of Shoso Nii on the rentals collected; that Shoso Nii paid for all expenses of upkeep of the property; that between June, 1941, to the date of the Vesting Order above mentioned Shoso Nii acted under and through his attorney-in-fact Katsutoshi Mikami who held a duly executed and recorded power of attorney signed by Shoso Nii which is in evidence in this cause;

(b) That during Shoso Nii's visit to Japan in 1941 he was unable to return to Hawaii because of the intervening war; that he returned to Hawaii on November 8, 1947; that during said period June, 1941,



to November 8, 1947, he was a resident of the Territory of Hawaii; that at the time of filing of this suit Shoso Nii was a resident of the Territory of Hawaii;

(c) That Plaintiff-Appellant, Shoso Nii, on or about 1928 graduated from the eighth grade of Waipahu Elementary School and made application for registration at the Kalakaua Junior High School in Honolulu; that he was accepted for enrollment by the said Kalakaua Junior High School; that he did not continue his studies there but instead helped Kaneichi Nii, his father, at said Kaneichi Nii's store; that said Kaneichi Ni at said time and repeatedly thereafter promised Shoso Nii all of said Kaneichi Nii's property in Hawaii at the time of said Kaneichi Nii's death or if said Kaneichi Nii left for Japan if Shoso Nii left school and helped at the said store; that the fact that there was such an agreement is corroborated by the testimony of Mr. Ikinaga and by the evidence of written entries made in the books of the Waipahu Garage, Ltd., a corporation in which Kaneichi Nii was a record stockholder up to 1939 showing that in spite of the fact that Kaneichi Nii remained the record stockholder, Shoso Nii received dividends in the name of Shoso Nii up to the time of the change of the stock record; that said Shoso Nii relied on said promise and gave up going to school and without any wages put in long hours of work every day including Sundays helping at the Kaneichi Nii's store up to January 2, 1933;

(d) That as of January 2, 1933, Kaneichi Nii, the father, desired to partially and prematurely execute the aforementioned promise and made a gift of the

father's store located at Waipahu to Shoso Nii; that Kaneichi Nii made, executed and delivered a Bill of Sale which was duly recorded, and effectively made a gift of said store to said son; that bank accounts in the name of the father at the Waipahu Branch of the Bank of Hawaii were also transferred to the son when the Bill of Sale was made;

(e) That on the 17th day of December, 1932, said Kaneichi Nii made and signed a document purporting to be a will in accordance with the promise aforementioned in subparagraph (c) bequeathing all of his properties, both real and personal, to the Plaintiff-Appellant;

(f) That Plaintiff-Appellant in reliance on the promise aforementioned in subparagraph (c) built two (2) two-bedroom houses on the premises in dispute and a substantial stonewall to keep the water of the Waipahu River from flooding the premises at the total expense to him of about \$3,000.00;

(g) That in 1938 the Plaintiff-Appellant negotiated for the purchase of the second and smaller parcel of real estate which is part of the property involved in this proceeding and serves as a right of way to the larger parcel in dispute; that the Plaintiff-Appellant was able to direct the form and in whose name this deed was to be executed; that the Plaintiff-Appellant caused title to the second parcel of real estate to be taken in the name of his father, Kaneichi Nii, because the right of way was to be appurtenant to the main parcel; that Plaintiff-Appellant at that time knew that title to the larger parcel

of real estate was in the name of his father, Kaneichi Nii; that the entire consideration for the small parcel was paid by Shoso Nii;

(h) That subsequent to May, 1935, up to the date of the Vesting Order, Plaintiff-Appellant had possession of the premises in dispute; his tenants lived on the premises in dispute;

(i) That for more than ten (10) years continuously and without interruption Plaintiff-Appellant had the open, exclusive, adverse and continuous possession of the premises in dispute;

(j) That in 1935 just before Kaneichi Nii's departure to Japan said Kaneichi Nii orally told Shoso Nii he did give all of his properties to the Plaintiff-Appellant; that said gift was in accordance with the promise aforementioned in subparagraph (c);

(k) That Plaintiff-Appellant's father had to leave for Japan in 1935 sooner than he had expected rather suddenly because of the sudden aggravation of the illness of his daughter who was then ill in Japan; that the fact that she was ill is well established by the testimony of her husband Jinichi Tsumoto;

(l) That because Kaneichi Nii had to depart suddenly for Japan in 1935, no deed of any nature whatsoever was executed by Kaneichi Nii; that there was another parcel of property in Waipahu which remained in the name of Kaneichi Nii close to the property in dispute; that in 1940 Shoso Nii sold this property to Attorney Oliver Kinney and kept for himself the consideration paid by said Attorney Oliver Kinney.

9. That the Court erred in refusing at the end of the case to permit the Plaintiff-Appellant to file his amended complaint to amend his complaint to meet the proof in the case.

Dated at Honolulu, T. H., this 21st day of March, A.D. 1949.

SHOSO NII,  
Plaintiff-Appellant,

By /s/ SHIRO KASHIWA,  
Attorney for Plaintiff-Appellant.

(Acknowledgment of Service.)

[Endorsed] : Filed Mar. 28, 1949. Paul P. O'Brien,  
Clerk.

---

[Title of U. S. Court of Appeals and Cause.]

### DESIGNATION OF RECORD

Comes now Shoso Nii, Plaintiff-Appellant in the above-entitled cause, and hereby designates the following parts of the record as necessary in the consideration of the points on which he intends to rely on appeal and requests that the following be printed as provided by the rules:

1. Complaint of Plaintiff-Appellant, Summons, and Officer's Return on Service of Writ.
2. Defendant-Appellee's Answer and Counter Claim.
3. Plaintiff-Appellant's Answer to Counter Claim.
4. Appearance of Counsel, Leon M. Gross.
5. Petition of the Attorney General of the United

States pursuant to Section 17 of the Trading with the Enemy Act as amended.

6. Answer to Petition of Attorney General under Section 17.

7. Oral Decision of the Court on Petition of the Attorney General of the United States for the Entry of an Order under Section 17 of the Trading with the Enemy Act, as amended, Directing Shoso Nii to Turn Over forthwith the Property Vested under Vesting Order No. 9777.

8. Plaintiff-Appellant's Motion for Leave to File Amended Complaint and Amended Complaint.

9. Plaintiff-Appellant's Motion for Findings of Fact.

10. Findings of Fact by the Court after a Trial of the Issues.

11. Conclusions of Law.

12. Opinion.

13. Judgment Order.

14. Order Directing Account and Payment under Section 17, Title 50, U.S.C.A., as amended.

15. The following Exhibits: Plaintiff-Appellant's A-1—Notice of Claim; A-2—Reply Alien Property Custodian; B—Deposition, Kaneichi Nii; C—Power of Attorney—S. Nii to K. Mikami; D-1 to D-10, incl. Income Tax Returns Year 1938 to 1947, inclusive; E-1—Registration Certificate, Selective Service; E-2—Permit to Leave, Selective Service; F—Deed, T. Ota to K. Nii; G—Bill of Sale, K. Nii to Shoso Nii; H—Deed, T. Ota to K. Nii; I—Power of Attorney, K. Nii to Shoso Nii; J—Power of Attorney, Saku Nii to Shoso Nii; K—Vesting Order No. 9777; L—Sketch Location of Property; M—Blue Print Prop-



erty; N—Photostat, Dividend Payment; O—Photostat, Endorsements of Stockbook, Waipahu Garage, Ltd.; P—Will, Kaneichi Nii.

Defendant-Appellee's: No. 1—Certificate of Title; No. 2-A to 2-M, incl., Tax Bills Real Property; No. 3-A—Letter, 10-27-47, K. Mikami to Alien Property Custodian; No. 3-B—Letter, 12-3-47, S. Kashiwa to James Hammond, O.A.P.; No. 3-C—Letter, 2-11-48, K. Mikami to O.A.P.; No. 3-D—Letter, 3-31-48, K. Mikami to O.A.P.; No. 3-E—Letter, 3-26-48, S. Kashiwa to James Hammond, O.A.P.

16. Notice of Appeal.

17. Cost and Supersedeas Bond and Approval of Bond.

18. Order Staying Judgment Order and Staying Order Directing Accounting and Payment under Section 17, Title 50, U.S.C.A., as amended.

19. This Designation of Record.

20. Entire Transcript of Evidence on trial and hearing on merits of cause.

Dated at Honolulu, T. H., this 21st day of March, A.D. 1949.

SHOSO NII,

Plaintiff-Appellant,

By /s/ SHIRO KASHIWA,

Attorney for Plaintiff-Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Mar. 28, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL  
BY APPELLEE

The appellee designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action, in addition to the portions of the record, proceedings and evidence heretofore designated by Plaintiff-Appellant in his Designation filed March 28, 1949:

1. Motion for issuance of commission to take deposition, Notice of Motion, Affidavit of Shiro Kashiwa, filed May 11, 1948;

2. Order of Motion for Issuance of Commission to Take Deposition, filed May 13, 1948;

3. Copy of deposition of Kaneichi Nii, etc., filed May 21, 1948;

4. Copy of Commission, filed May 21, 1948;

5. Stipulation and Order for Pre-trial Examination of Shoso Nii and Stipulation for extension of time for filing cross-interrogatories on behalf of Defendant Tom C. Clark, etc., filed July 21, 1948;

6. Notice of motion for Summary Judgment, filed August 18, 1948;

7. Motion to Strike Affidavit of Leon R. Gross and Notice, etc., filed August 23, 1948;

8. Motion for Summary Judgment and Affidavit of Leon R. Gross in support of Motion for Summary Judgment, filed August 24, 1948;

9. Affidavits of Albert K. Makinney and Mark N. Huckestein, filed August 30, 1948;

10. Motion to Strike Affidavits, filed September 3, 1948;

11. Request for Admission of Genuineness of Documents and Request for Admission of Facts pursuant to Rule 36 of the C.R.O.P., filed September 9, 1948;

12. Affidavit of T. Ota in support of Motion for Summary Judgment, filed September 10, 1948;

13. Admission of Facts and of Genuineness of Documents, filed September 13, 1948;

14. Counter Affidavit of Shoso Nii in Answer of Affidavit of T. Ota, filed in support of the motion for Summary Judgment, filed September 14, 1948;

15. Amended Order and Rule to Show Cause, filed October 28, 1948;

16. Marshal's returns, filed October 28, 1948;

17. Motion to reopen case to take additional testimony, filed December 9, 1948;

18. Memorandum of Tom C. Clark, filed December 13, 1948;

19. A copy of this Designation of Additional Parts of the Record by Appellee.

Dated at Honolulu, T. H., this 11th day of April, A.D. 1949.

TOM C. CLARK,

Attorney General of the United States, as Successor to the Alien Property Custodian, Appellee.

By /s/ RAY J. O'BRIEN,

United States Attorney.

/s/ HOWARD K. HODDICK,

Assistant U. S. Attorney.

/s/ LEON R. GROSS,

Attorney.

All by:

/s/ ROBERT B. McMILLAN,  
Assistant United States Attorney, Northern District  
of California.

[Endorsed] : Filed April 11, 1949. Paul P. O'Brien,  
Clerk.